(37,679)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE, PETITIONER,

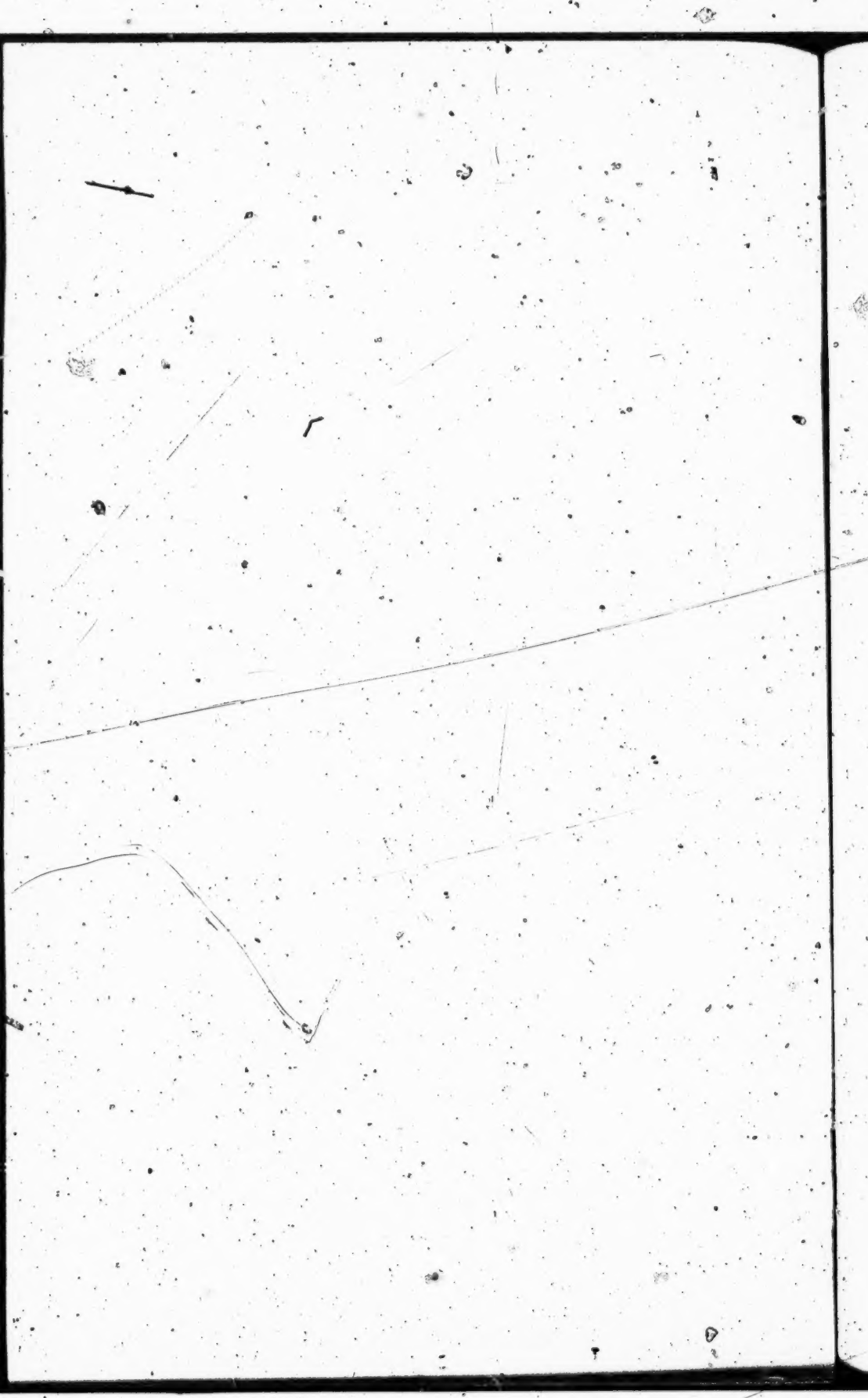
vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE

INDEX

	Original	Print
Record from chancery court of Blount County	1	1
Bill of complaint	1	1
Answer of R. B. Leake	4	3
Intervening petition and answer of J. T. Trotter, guardian	7	4
Stipulation of facts	11	7
Exhibit "A"—Decree of chancery court in case of Leake vs. Leake	14	9
Final decree	18	12
Clerk's certificate (omitted in printing)	20	
Cost bill (omitted in printing)	20	
Assignments of error	21	13
Proceedings in supreme court of Tennessee	22	13
Opinion, Swiggart, J.	22	13
Judgment	28	17
Stipulation as to transcript of record	30	18
Clerk's certificate (omitted in printing)	31	
Order extending time	34	18
Order allowing certiorari		19



[fols. a-1] [File endorsement omitted]

IN CHANCERY COURT OF BLOUNT COUNTY

No. 2006

THE STATE OF TENNESSEE, in Its Own Behalf and for the Use and Benefit of Blount County, Tennessee,

versus

The Following-named Citizens and Tax Payers of Blount County, Tennessee: Ninth District, LEAKE, R. B.

BILL OF COMPLAINT—Filed Feb. 26, 1931

To the Honorable Ben Robertson, Chancellor, holding the Chancery Court at Maryville for Blount County, Tennessee:

Complainants respectfully show to the Court:

I

That the defendants are delinquent in the payment of the State and County Taxes for the year 1929, on real estate assessed against them in Blount County, Tennessee, which taxes together with interest and penalty remains unpaid.

II

That under the laws of Tennessee, the lands of said defendants as set forth and described in the Tax Books for the year 1929, and in the report of delinquent real estate for the year 1929, are subject to and are impressed with the lien for the unpaid taxes, interest, penalties and costs due the State of Tennessee and County of Blount for the year 1929.

[fol. 2]

III

That the following is the list and description of said delinquent tax payers for the year 1928, which are subject to and impressed with a lien by law for the payment of said taxes, interest, penalties and costs, together with the entire amount of unpaid delinquent real estate on March 1, 1929:

Leake, R. B., 5 acres, from Eggers, bounded by James, Truck, Pike, $59.40.

This report of delinquent real estate taxes for the year 1929 is herewith filed as Exhibit "A" to the bill and made a part thereof, but the same need not be copied in issuing process.

Premises considered, complainant prays:

I

The proper process issue to compel said defendants and each of them to appear and answer this bill, but their oaths to their answer are waived.

II

That in case any of the defendants are not residents of the State of Tennessee, that publication be made for said parties to appear and answer this bill, but their oaths to their answers are waived, and if necessary attachment issue [fol. 3] and levy upon the lands against which there are liens for taxes.

III

That complainants have a decree against each of said defendants for the full amount of said unpaid taxes, interest, penalties and costs; and that a lien be declared on the respective properties of each of said defendants to secure the amount of said unpaid taxes, penalties and costs.

IV

That to enforce said lien on said respective properties of each of said defendants, and said property be sold for cash in hand subject to the equity of redemption; and that the proceeds of said sale be applied to the satisfaction of this decree and in discharge of said lien.

V

That complainant have such other, further and general relief as it may be entitled to on the hearing.

Thos. N. Brown, Tax Attorney.

Duly sworn to by Thos. N. Brown. Jurat omitted in printing.

[fol. 4] [File endorsement omitted]

IN CHANCERY COURT OF BLOUNT COUNTY

[Title omitted]

ANSWER OF R. B. LEAKE—Filed Sept. 21, 1931

In this cause the defendant, R. B. Leake, for answer and disclaimor to the bill filed against him and others in this cause, separately answering, says:

[fol. 5]

I

That he disclaims any and all right, title, interest or claim in and to the tract of land described on page 34 of the original bill.

II

Further answering this defendant would show to the Court that the property as described on page 34 of the original Bill was purchased from one Eggers by this defendant as guardian of one Joseph A. Leake, a non compos mentis. It was purchased exclusively with funds belonging to the said Joseph A. Leake and title was taken in the name of this defendant as guardian of said Joseph A. Leake. The property is therefore the exclusive property of the said Joseph A. Leake.

Subsequent to the purchasing of this property, to-wit, on or about the — day of May, 1928, this defendant was relieved as the guardian of the said Joseph A. Leake and W. C. Murphy was appointed guardian in his stead. Subsequent to said date to-wit, on or about the — day of August, 1931, J. T. Trotter of Maryville, Blount County, Tennessee, was appointed and qualified in the County Court at Blount County as guardian of the said Joseph A. Leake, replacing the said W. C. Murphy who resigned. Said J. T. Trotter is now acting in the capacity as guardian and is a proper defendant to this cause.

III

This defendant further says that he does not now and never has since May, 1928, claimed any interest whatever in said land and has never had possession of said land or exer-

[fol. 6] cised any acts of ownership over it except that he is now residing on said land as a tenant of the guardian.

He therefore prays that this disclaimor may be taken as a full and sufficient answer to said bill and that he may be hence dismissed with his costs.

R. B. Leake, by D. Sylvan Kramer, Solicitor. Kramer & Kramer, Solicitors.

[fol. 7] [File endorsement omitted]

IN CHANCERY COURT OF BLOUNT COUNTY

[Title omitted]

INTERVENING PETITION AND ANSWER OF J. T. TROTTER, GUARDIAN—Filed Sept. 22, 1931

The Intervening Petition and Answer of Joseph A. Leake, by J. T. Trotter, His Guardian, and of J. T. Trotter, Guardian of Joseph A. Leake, to the Original Bill.

I

These petitioners for joint and separate answers to the Bill filed against R. S. Leake and others say that the petitioner, Joseph A. Leake, is non compos mentis and is now confined in the United States Government Hospital at Marion, Indiana.

The petitioner, J. T. Trotter, is the duly appointed and qualified guardian of the said Joseph A. Leake, having been so appointed by the County Court of Blount County, Tennessee, and having qualified as such guardian on the — day of August, 1931. Certified copy of his letters of Guardianship will be produced upon the hearing or sooner if demanded.

II

These petitioners further answering say that the five acre Tract of land as described in the original bill and alleged therein to be the property of R. B. Leake, was, throughout the year of 1929, and still is, a part of the estate of the petitioner Joseph A. Leake. They therefore deny that said property or any part thereof was or is the property of R. B. Leake and they deny that the said R. B. Leake has any right, [fol. 8] title, interest or claim in or to the said real estate.

They aver that said property is now held by the petitioner, J. T. Trotter, as guardian of the said Joseph A. Leake.

III

These petitioners deny that they are delinquent in the payment of state or county taxes for the year 1929 or for any other year on the property described in the original Bill. They deny that any taxes, interest, or penalty is due.

They deny that said lands are subject to or impressed with any lien for unpaid taxes, interest, penalties, or costs due the State of Tennessee or to Blount County for the year 1929.

They deny that there is $59.40 due as taxes, interest, penalty, and costs on said land. They deny that there is any amount due on said land for the year 1929, or for any other year.

IV

These petitioners further answering would show to the Court that the petitioner, Joseph A. Leake, served in the United States Army during the recent World War and by virtue of his services in said World War he became non compos mentis and has been in such condition ever since his discharge from the Army.

By reason of his disability incurred in the War his estate was entitled to receive and has received compensation of $100.00 a month from the United States Government under [fol. 9] and by virtue of the "World War Veterans' Act, 1924", being an act of the Congress of the United States, passed June 7, 1924, and acts amendatory thereto.

While enlisted in the Army the said Joseph A. Leake procured from the United States Government a policy of life insurance in the sum of $10,000.00. This insurance is also provided under the said act of The Congress of the United States. Since the said Joseph A. Leake has been incompetent his estate under the terms of said policy, has been receiving from the United States Government $57.50 per month in addition to the compensation hereinbefore mentioned.

This veteran has no other income and has received no money from any other source since his disability.

Part of the money thus received was, by permission of this Court, invested by the guardian of the said Joseph

A. Leake in the property which is described in the original Bill as being the property of R. B. Leake. The money invested in this property was received exclusively as compensation and insurance from the United States Government under the Acts of Congress above set out. This investment was made in accordance with a decree of this Court authorizing a guardian to so invest said money which decree is of record in Minute Book —, page —, of this Court. Said property is now and has continuously since its purchase been under the direct control of the guardian of said Joseph A. Leake.

Said Act of the Congress of the United States provides:

"The Compensation, insurance, and maintenance and support allowance payable shall not be assignable; shall not be subject to the claims of creditors; and shall be exempt from all taxation."

V

These petitioners therefore aver that said property represents an investment of the fund received from the [fol. 10] United States Government and as such under the Acts hereinbefore set out, is still subject to governmental control and therefore not subject to any tax either by the State of Tennessee or Blount County.

VI

The premises considered, the petitioners pray that:

First. They be permitted to file this intervening petition as an answer to the original Bill in this cause, and that they be permitted to become defendants in the cause.

Second. That upon the hearing the original bill be dismissed as to these defendants and as to the land sought to be sold in this proceeding.

Third. These petitioners have all such other further and general relief as they may be entitled to upon the hearing.

Joseph A. Leake, J. T. Trotter, by D. Sylvan Kramer, Solicitor. Kramer & Kramer, Solicitors.

Duly sworn to by D. Sylvan Kramer. Jurat omitted in printing.

[fol. 11] [File endorsement omitted]

IN CHANCERY COURT OF BLOUNT COUNTY

[Title omitted]

STIPULATION OF FACTS—Filed April 12, 1932

It is stipulated and agreed by all parties hereto that Joseph A. Leake is a veteran of the World War and was rendered non compos mentis as a result of his service in said War. J. T. Trotter is the regularly appointed and duly qualified guardian of Joseph A. Leake. Said Joseph A. Leake has had a guardian continuously from May 15, 1922, down to the present time.

It is further stipulated and agreed that as a result of said disability the guardian of Joseph A. Leake is now, [fol. 12] and has been since May 1922, receiving from the Veterans' Bureau of the United States Government the sum of $100.00 per month as compensation as provided in the World War Veterans' Act of 1924 (June 7, 1924, c. 320, Sec. 1, 43 Stat. 607), same being an Act passed by the Congress of the United States, June 7, 1924, and Acts amendatory thereto. And the guardian is also receiving for the benefit of his said ward the sum of $57.50 per month from the Veterans' Bureau of the United States Government as benefits under an insurance policy on the life of the Veteran as provided by said Act of Congress (June 7, 1924, c. 320, Sec. 300, 43 Stat. 624) and Acts amendatory thereto.

It is further stipulated and agreed that the veteran's estate consists solely of money received from the United States Government as above set out, and of the property in question in this cause.

It is further stipulated and agreed that on June 3, 1924, the guardian of Joseph A. Leake, purchased from one J. C. Eggers five acres of land with a house, barn, and outbuildings thereon, which is the property in question in this cause. The consideration for said sale was $6,000.00. Of this amount the guardian paid, out of the estate of his ward, from funds received from the United States Government, $2,500.00 cash, and executed three notes payable one, two and three years after date respectively for the

respective amounts of $666.00, $667.00, and $667.00, and also assumed the payment of a mortgage of $1,500.00 owing to Maryville College.

This purchase was, on January 25, 1926, confirmed by the Chancery Court of Blount County in the case of R. B. Leake vs. Joseph A. Leake, Number 1448, and a copy of [fol. 13] the decree entered in that cause is filed as Exhibit "A" to this stipulation and is made a part hereof.

It is further stipulated and agreed that the three notes for $666.00, $667, and $667.00 respectively were paid off by the guardian from funds received in the manner as before set out from the United States Government.

After the purchase of said land the guardian insured the buildings on the property against fire to the amount of $3,000.00, the premiums being paid out of the ward's estate. In 1928 the dwelling house on the property was burned and the guardian collected from the fire insurance companies the $3,000.00 insurance. Out of this fire insurance money the guardian paid off the $1,500.00 mortgage to Maryville College on March 26, 1929.

It is further stipulated and agreed that this property was, during the year 1929, under the control of the guardian of Joseph A. Leake and was erroneously assessed in the name of R. B. Leake.

It is also stipulated and agreed that the assessed value of the property in question for the year 1929 was $3,000.00 and the State tax rate was $.20 and the County tax rate was $1.78 making the total rate for the year 1929 of $1.98.

It is further stipulated and agreed that no taxes, either State or County, have been paid on said *on said* property for the year 1929 and if the property was subject to taxation said taxes were unpaid and delinquent at the time the original bill was filed in this cause and were subject to, and impressed with a lien for the unpaid taxes, interest, penalty and costs.

[fol. 14] Approved:

Brown & Johnson, Solicitor for Complainant. D. Sylvan Kramer, Solicitor for Defendant.

[File endorsement omitted]

EXHIBIT "A" TO STIPULATION OF FACTS

Monday, January 25, 1926

[Title omitted]

IN THE CHANCERY COURT AT MARYVILLE FOR BLOUNT COUNTY, TENNESSEE

This cause came on to be heard this day before the Honorable E. R. Taylor, Chancellor, upon the entire record in this cause, but more especially upon the report of the Clerk and Master on an order of reference heretofore entered which report is in the words and figures as follows:

No. 1448

R. B. LEAKE

vs.

JOSEPH A. LEAKE

Master's Report on Reference

[fol. 15] In obedience to an order of reference directing the Master to hear proof and report:

1st. What is the mental condition of the defendant Joseph A. Leake.

2nd. Whether the purchase of the property described in the original bill by complainant for his ward, Joseph A. Leake, is an advantageous purchase, and whether it is manifestly for the interest and welfare of the defendant that said purchase be confirmed to the defendant.

3rd. What is the income of the defendant and what moneys have come into the hands of complainant belonging to the defendant.

4th. The Master will report upon the exact terms of the purchase and will show why the purchase would be advantageous for the defendant.

5th. The Master will report upon any other matters deemed pertinent to the issues in this suit.

After hearing proof in this cause and considering that on file I submit the following report:

I

I find that Joseph A. Leake is a person of unsound mind, and that he has been adjudged such by the County Court of Blount County (Deps. W. L. James, P. 2, Deps. R. B. Leake, P. 5).

II

I find from the proof that the purchase of the property described in the original bill is an advantageous one. (Deps. W. L. James, P. 3, J. O. Law, P. 10) and it would be manifestly to the best interest and welfare of the defendant Jo-
[fol. 16] seph A. Leake, that said purchase be confirmed to the said defendant (Deps. R. B. Leake, P. 6).

III

The income of the defendant is One Hundred Dollars compensation per month from the U. S. Government and $57.00 per month on insurance (Deps. R. B. Leake, P. 5 and 6), and the money that had come into the hands of R. B. Leake as Guardian, on September 14, 1925, the time of taking proof in this cause was $6,837.00 (Exhibit to Deps. R. B. Leake).

IV

The complainant R. B. Leake purchased the said tract of land from J. C. Eggers on the following terms: For the consideration of $6,000.00, of which sum $2,500 was paid cash in hand, and assuming the payment of one note of $1,500.00 to Maryville College with interest from April 15, 1924, said note is secured by deed of trust on said tract of land, also three notes dated June 3, 1924, one for $666.00 due one year after date, one for $667.00 due two years after date, and one for $667.00 due three years after date, all bearing interest from date payable annually. (See Deed Exhibit to original Bill.) I find from the proof on file the purchase to be an advantageous one on the part of Joseph A. Leake to be such that he is better when he is away from too many people, and as said property is located away from

town in a quiet place, he is easier to control and seems to be satisfied to live there. It is therefore an advantageous purchase for said defendant, Joseph A. Leake.

Respectfully submitted.

[fol. 17] Joe H. Gamble, Clerk & Master.

And said report being unexcepted to, is on motion of complainant in all things ratified and confirmed.

It is therefore accordingly ordered, adjudged and decreed by the court that complainant be and is hereby authorized and directed by the court to make and executed a deed conveying and vesting the title in and to the following described tract of land to the defendant, Joseph A. Leake, to-wit:

Situated in the 9th Civil District of Blount County, Tennessee, containing 5 acres more or less, and described as follows: Beginning on a stake in the Tuchaleechee Pike corner to Pleas Headrick, thence with the same N. 42½ E. 30.9 chains to a stone on the line of W. L. James; thence with said line S. 50 E. 7 1/10 chains to a stone, a corner to W. T. Renfro; thence with the same S. 42½ W. 24 4/10 chs. to a stake in the Pike, thence with said Pike N. 74½ W. 8 3/10 chas. to the beginning, containing five acres, more or less.

It is further ordered, adjudged and decreed by the Court that the purchase and investment of the funds of complainant's ward be in all things ratified and confirmed by the Court.

The Court further orders, adjudges and decrees that complainant be, and is hereby authorized to use the money in his hands for the purpose of paying the purchase price for said tract of land, and is authorized and directed to use such other funds as may come into his hands for the purpose of finishing the payments on said tract of land.

It is further ordered, adjudged and decreed by the Court that complainant pay the cost of this cause out of the funds in his hands including a fee to Crawford & Goddard for their services of $60.00 and a fee of $25.00 to Chas. C. Jackson, Guardian ad Litem.

[fol. 18] [File endorsement omitted]

IN CHANCERY COURT OF BLOUNT COUNTY

No. 2006

STATE OF TENNESSEE

vs.

ARTHUR BLAIR et al.

FINAL DECREE—Filed September 15, 1932

This cause came on to be heard before the Honorable Ben Robertson, Chancellor, upon the original bill, the answer of the defendant R. B. Leake, the intervening petition and answer of J. T. Trotter, guardian of Joseph A. Leake, and the stipulation of facts and the argument of counsel, from all of which the Court is — the opinion that the property in question is not subject to taxation either by the State of Tennesse or by Blount County.

It is therefore ordered, adjudged and decreed by the Court that the complainant's bill, in so far as it seeks to collect taxes on the five acres described in the original bill and alleged therein to belong to R. B. Leake, is dismissed.

It is further ordered, adjudged and decreed by the Court that the defendants, R. B. Leake, J. T. Trotter, guardian of Joseph A. Leake and Joseph A. Leake have and recover of the State of Tennessee, all the costs incident to making these defendants parties, for which execution will issue.

[fol. 19] To the action of the Court in holding that the property is not subject to taxation, and in dismissing the complainant's bill as to these defendants, the State of Tennessee excepts and prays as appeal to the Supreme Court of Tennesese which is granted.

O. K.

Sam Johnson, for Complt. D. Sylvan Kramer, for Defts.

Thereupon Court adjourned until Court in course.

[fol. 20] Clerk's certificate to foregoing transcript omitted in printing.

Bill of costs omitted in printing.

[fol. 21] IN SUPREME COURT OF TENNESSEE

ASSIGNMENT OF ERRORS

First. The Honorable Court erred in holding that the property belonging to Joseph A. Leake, a non compos mentis, was not subject to taxation, either by State of Tennessee, or by Blount County.

Second. The Court erred in holding that this entire tract of land and improvements, was not subject to either State and County taxes, when it is clearly shown that all of the purchase price of said farm was not paid out of money derived either from the Insurance Department or from the Veterans' Bureau.

Third. The Honorable Court erred in adjudging the costs of the cause against the State of Tennessee.

[fol. 22] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE, SEPTEMBER TERM, 1932

For Publication. Swiggart, Judge

STATE OF TENNESSEE

vs.

ARTHUR BLAIR et al.

Blount Equity

OPINION—Filed Feb. 14, 1933

This suit was instituted by the State to collect a property tax assessed and levied upon a tract of land for the year 1929. During that year title to the land was held by Joseph A. Leake, non compos mentis, either in his own name or in the name of his guardian for him.

By intervening petition, J. T. Trotter, duly appointed and qualified guardian of the said Joseph A. Leake, claimed an exemption of said land from taxation, on the ground that it was purchased, under an order of the Chancery Court of Blount County, for the said ward, with

money paid to the guardian by the United States under the World War Veterans' Act of Congress.

The material facts bearing upon this claim of exemption [fol. 23] were stipulated by counsel. The stipulation recites that Joseph A. Leake was rendered mentally incompetent as a result of his service in the World War, and has had a guardian from May, 1922, to the present time. Since May, 1922, the guardian has received from the Veterans' Bureau of the United States Government for his ward the sum of $100 per month as compensation, and an additional sum of $57.50 per month as disability benefits under a policy of War Risk Insurance. The ward has no other property than the proceeds of these payments and the land in question. All of the purchase price of the land was paid with money received as above set out, except $1,500, the proceeds of fire insurance on a building located on the property, premiums for which insurance were paid by the guardian with money received from the United States. The record does not recite whether the title to the land was taken in the name of Trotter, as guardian, or directly in the name of the ward, but it is conceded that the ward is alone interested beneficially in the land.

The Chancellor decreed that the land was not subject to the property tax levied by the state and county, and the state has appealed.

The exemption is claimed by the guardian for his ward under the provisions of the United States Code, Title 38, section 454, which provides:

"'The compensation, insurance and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award [fol. 24] is made under Parts II, III, or IV; and shall be exempt from all taxation.'"

It is contended that the intervention of the guardianship has had the result that the payments of compensation and insurance by the United States have not yet reached the ward, but are still in the hands of the guardian as an agency of the United States Government.

This question has received consideration by this court and was determined adversely to the contentions of the

guardian in the case of State v. Bank of Bristol, opinion filed on January 7, 1933, 165 Tenn. —, — S. W. (2d) —. In that case Chief Justice Green, for the Court, said:

"Conceding that the guardian is in a sense a government agent. He is also the agent of the beneficiary of the fund. His duties to the government consist in applying the fund for the benefit of the minor and in reporting to the government from time to time as to such application. The government does not undertake to regulate the manner of the application of such fund to the beneficiary's use. So far as the Federal statutes are concerned, the guardian may spend the money directly for the beneficiary's comfort, invest the money to provide an income for the beneficiary, or deposit the money in bank to meet the future needs of the beneficiary. In making the deposit in bank, therefore, this guardian was acting as agent of the incompetent beneficiary and not as agent of the government.

[fol. 25] "It seems a mistake to us to say that the government retained any title to or interest in this fund after it was paid to the guardian. The government retained control of the administration of the fund, to a limited extent, and made a provision with reference to escheat. Such provisions are sustained because the guardian was not bound to accept the fund, and if he did accept, he took on the terms prescribed by the Act of Congress. United States v. Hall, 98 U. S. 343, 25 L. ed. 180. The State likewise regulates the administration of trust funds but it has never been contended that such regulations could be regarded as a declaration of interest on the part of the State in these funds. It is settled in this jurisdiction and elsewhere that in the relation of guardian and ward, the title to the property is in the ward and that the possession of the guardian is the possession of the ward, and will inure to the ward's benefit under statutes of limitation. Williams v. Walton, 16 Tenn. (8 Yerg.) 387; Davis v. Mitchell, 13 Tenn. (5 Yerg.) 281. Such is the rule elsewhere. 28 C. J. 1128, 12 R. C. L. 1123."

A similar conclusion was reached by the Supreme Court of Kansas in State ex rel. Smith (Boynton) v. Board of Commissioners of Shawnee County, 132 Kan. 233, 294 Pac.

915; Certiorari denied by the Supreme Court of the United States, 283 U. S. 855, 75 L. ed. 1462.

The Supreme Court of Kansas, in the case cited, further [fol. 26] held that shares of stock in a private industrial corporation, purchased by a guardian for his ward with money paid by the United States as compensation and insurance, as in the case now before us, were not exempt from taxation by the State under the Act of Congress cited. Since the Supreme Court of the United States declined to review the decision of the Supreme Court of Kansas, we regard the decision as an authoritative construction of the exemption clause of the Act of Congress. The case was cited with approval, and followed, in Martin v. Guilford County, — N. C. —, 158 S. E. 847, 76 A. L. R. 978, and in State v. Wright, — Ala. —, 140 So. 584.

The earlier authorities cited on the brief of the appellee are referred to and distinguished in the opinion of the Supreme Court of Kansas above cited. Rucker v. Merck, 172 Ga. 793, 159 S. E. 501, and Atlanta v. Stokes, — Ga. —, 165 S. E. 270, sustaining the exemption, are in line with earlier rulings made by the Supreme Court of Georgia, but we think the construction given to the Act of Congress by the courts of Kansas and Alabama is the better reasoned and that it is the correct construction. It is in accord with the legislative policy of this State, which exempts from taxation and execution pensions paid by the State only so long as the money received by the pensioner is in his hands or on deposit in bank. Code of 1932, section 7715.

The decree of the chancery court will be reversed, and the case remanded to the chancery court for a decree sustaining the prayer of complainant's bill.

The costs of the appeal will be adjudged against the guardian, and if not paid, will be certified to the chancery [fol. 27] court, to be included in the decree of that court as a part of the tax lien.

Swiggart, Judge.

[fol. 28] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE, AT KNOXVILLE,
SEPTEMBER TERM, 1932

STATE OF TENNESSEE

vs.

ARTHUR BLAIR et al.

Blount Equity. Reversed and Remanded

Entered on the Minutes Feb. 21st, 1933, Page 185

JUDGMENT—Filed Feb. 21, 1933

This cause came on to be heard before the Honorable Supreme Court at a former day, upon the transcript of the record from the Chancery Court of Blount County and the assignments of error, and the briefs of all parties, including brief of amicus curiæ, and the argument of counsel, and was taken under advisement by the Court; and thereupon on consideration it was, on this 11th day of February, 1933, ordered, adjudged and decreed by the Court that the decree of the Chancellor is erroneous and that the complainant is entitled to the relief sought against J. T. Trotter, Guardian of Joseph A. Leake, in its original bill.

It is therefore ordered, adjudged and decreed by the Court that the decree of the Chancellor be reversed, and the case remanded to the Chancery Court for a decree sustaining the prayers of the complainant's bill.

It is further ordered, adjudged and decreed by the Court that the defendant, J. T. Trotter, Guardian of Joseph A. Leake, shall pay the costs of the appeal and if not paid, said [fol. 29] costs will be certified to the Chancery Court of Blount County to be included in the decree of that Court as a part of the tax lien.

The written opinion filed by the Court is hereby made a part of the record in this cause.

(Signed) Grafton Green, Colin P. McKinney, Wm. H. Swiggart.

[fol. 30] IN SUPREME COURT OF TENNESSEE

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed by and between the solicitors for the -spective parties that the transcript of record — be filed in the Supreme Court of the United States in connection with petition for writ of certiorari shall include the following:

(1) The entire record as filed in the Supreme Court of Tennessee, omitting page 18.

(2) The assignments of errors filed in the Supreme Court of Tennessee.

(3) The Opinion of the Supreme Court of Tennessee.

(4) The judgment rendered by the Supreme Court.

(5) Copy of this stipulation.

(6) Clerk's certificate.

Dated this May 12, 1933.

Sam Johnson, Solicitor for Complainant. Kramer & Kramer, Solicitor- for Defendant.

[fols. 31–33] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 34 & 35] IN SUPREME COURT OF UNITED STATES

ORDER EXTENDING TIME—Filed May 8, 1933

Time extended until May 18, 1933.

J. C. McReynolds, Justice.

[fol. 36] [File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of Tennessee is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4053)

TABLE OF CONTENTS:

	Page
Petition for writ of certiorari	1, 6
Reasons why this court should take jurisdiction	4
Brief	7, 21
I. Opinions of the court below	7
II. Jurisdiction	8
III. Statement of the case	8
IV. Assignment of errors	9
V. Argument	9
(1) Act of Congress	9
(2) The property here involved is compensation and insurance and was paid under Parts II and III of said Act	10, 16
(3) The veteran being a non compos and his property being handled by a guardian, such veteran has not actually received these compensation and insurance benefits, but they are in fact still "payable" to him	17, 19
(4) The fact that fifteen hundred ($1,500.00) dollars was paid on this property in March, 1929, out of the proceeds received from a fire insurance policy, does not affect the questions here involved	19, 20
VI. Conclusion	20

Table of Cases

Cassarolla vs. United States, 271 Fed., 486	15
City of Atlanta vs. Stokes, — Ga., —; 165 S. E., 270	5, 8, 12
In Re Murphy's Committee, 236 N. Y. S. 343; 134; Misc. Rep., 683	18
In Re Strarum's Estate, 218 N. Y. S., 394	16
Payne vs. Jordan, 36 Ga. App., 787; 138 S. E., 260	12, 18
Rucker vs. Merck, 172 Ga., 793; 159 S. E., 501	5, 8, 10
Spicer vs. Smith, 77 L. Ed., 599	17
State of Tennessee ex rel. vs. Arthur Blair et al., 165 Tenn., —; 57 S. W., (2d) 455	6, 7
Tama County vs. Kepler, 187 Ia., 34; 173 N. Y. 912	18
Wilson vs. Sawyer, 177 Ark., 492; 6 S. W. (2d) 825	12
Yates County Bank vs. Carpenter, 119 N. Y., 550; 23 N. E., 1108; 7 L. R. A., 557	13

STATUTES.

	Page
Shannon's Annotated Code (Tenn.), Sec. 757	3, 10
Shannon's Annotated Code (Tenn.), Sec. 4280	18
United States Code, Title 30, Sec. 450	2
United States Code, Title 38, Sec. 54	17
United States, Code, Title 38, Sec. 454	4, 5, 8, 9, 17
United States Code, Title 38, Sec. 511-512	3

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE, PETITIONER,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, J. T. Trotter, Guardian of Joseph A. Leake, a non compos mentis, and which Guardian was the appellee in the above entitled cause in the Supreme Court of Tennessee, respectfully shows to Your Honors:

I.

Summary Statement of the Matter Involved.

This is a suit in equity brought in the Chancery Court at Maryville, Tennessee, by the State of Tennessee in its own behalf and for the use and benefit of Blount County, a subdivision of the State of Tennessee, seeking to collect unpaid and delinquent taxes which had been assessed for the year 1929 on numerous pieces of real estate located in said County. Among the pieces of real estate on which it was sought by the Bill to collect taxes, was the five-acre tract of land here involved, which was assessed at Three Thousand ($3,000) Dollars.

The case was tried in the Chancery Court upon a Stipulation of Facts, which shows that one Joseph A. Leake, a veteran of the World War, was rendered non compos mentis as a result of his services in said War (Record p. 7). Because of said disability, a Guardian was appointed for said non compos and this Guardian has been receiving for many years, from the Veterans Bureau of the United States Government, One Hundred ($100) Dollars per month as compensation under the provisions of the World War Veterans' Act of 1924 (Act of June 7, 1924, c. 320, Sec. 1, 43 Stat. at L. 607, U. S. C. Title 30, Sec. 450), and Acts amendatory thereof. The Guardian has also been receiving for the benefit of his ward, Fifty Seven and 50/100 ($57.50) Dollars per month from the Veterans Bureau as disability benefits, under a war risk insurance policy issued on the life of said veteran and paid under the World War Veterans' Act of 1924 (Act of

June 7, 1924, c. 320, Sec. 300, 43 Stat. at L. 624, U. S. C. Title 38, Secs. 511-512) (Record p. 7).

Under a proper order of the Chancery Court, the Guardian of Joseph A. Leake, in 1924, purchased, as a home for his ward, the five-acre tract of land, the taxes on which are here involved, at the price of Six Thousand ($6,000) Dollars and said Court authorized the payment therefor out of the funds received by the Guardian from the United States Government. The Guardian paid Four Thousand Five Hundred ($4,500) Dollars on the purchase price, out of the funds of his ward which had been received from the United States Government. For the remainder of the consideration he assumed a mortgage of Fifteen Hundred ($1,500) Dollars. Later certain buildings on this property were destroyed by fire and the Guardian collected Three Thousand ($3,000) Dollars in fire insurance (Record p. 8). The premium on the fire insurance policy had been paid by the Guardian out of the funds of his ward received from the Government (Record p. 8).

Out of the Three Thousand ($3,000.00) Dollars fire insurance collected by the Guardian, the Fifteen Hundred ($1,500.00) Dollars mortgage was paid off. However, this mortgage was not paid off until March 26, 1929 (Record p. 8).

Under the Statutes of Tennessee taxes for each year became a lien upon the property as of the 10th of January.

Shannon's 1917 Code, of Tennessee, Sec. 757.

The property was under the control of the Guardian during the year 1929 (Record p. 8).

The Guardian insisted that by virtue of Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C., Title 38, Sec. 454), this property was exempt from taxation (Record p. 6).

The Chancellor sustained the position of the Guardian and decreed that the State and County could not subject this property to any taxes (Record p. 12).

An appeal from said decree was taken by the State and County to the Supreme Court of Tennessee. The sole question involved upon this appeal was the right and power of the State and County to tax this particular property regardless of the provisions of said Act of Congress (Record p. 13).

The Supreme Court of Tennessee in an Opinion handed down on February 14, 1933, reversed the Trial Court and held that the property was subject to taxation (Record pp, 13-16; 57 S. W. (2d) 455). The decree based upon said Opinion was entered by the Court on February 21, 1933 (Record p. 17).

This petitioner being of the opinion that the final decree was entered on February 14, 1933, made application for and obtained from this Court, an order extending the time for the filing of this petition to May 18, 1933. However, petitioner learns that the decree was entered by the Court on February 21, 1933, and, therefore, said order was unnecessary.

II.

Reasons Relied on for Allowance of the Writ.

The Federal question of substance not heretofore determined by this Court, as to the right and power of

a State, or a political subdivision of a State, to tax property of a non compos World War Veteran which property was purchased with compensation and disability payments made under the War Risk Insurance Act and the World War Veterans' Act of 1924, was decided by the Supreme Court of Tennessee in the present case. Said Court held that such property can be taxed by the State and its subdivisions regardless of Section 22 of the said World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C. Title 38, Section 454). Upon said question the highest court of the State of Georgia has reached a different conclusion from the Supreme Court of the State of Tennessee, the Supreme Court of Georgia having held that property thus acquired is exempt from taxation.

Rucker v. *Merck,* 172 Ga. 793; 159 S. E. 501.
City of Atlanta v. *Stokes,* — Ga. —; 165 S. E., 270 (1932).

The question involved is one of considerable importance because there are many pieces of real estate owned by disabled veterans of the World War or by their guardians which property was purchased with funds received under the World War Veterans' Act and the right to tax all such property depends upon the ultimate decision of this Court.

It is important that this question be definitely and finally determined and this can only be done by a construction by this Court of that part of the World War Veterans' Act of 1924 wherein it is said "the compensation, insurance and maintenance and support allowance payable under Parts II, III and IV, respectively,

shall not be assignable; shall not be subject to the claims of creditors * * * and shall be exempt from all taxation".

III.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari issue under the seal of this Court, directed to the Supreme Court of Tennessee, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court had in the said case therein entitled State of Tennessee *ex Rel.*, Appellant, *v.* Arthur Blair *et al.*, Appellees, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States; that the judgment herein of the said Supreme Court of Tennessee be reversed by this Court. Petitioner prays for such further relief as this Court may deem proper.

Dated May 13, 1933.

J. T. TROTTER,
Guardian of Joseph A. Leake,
By R. R. KRAMER,
Counsel for Petitioner.

D. SYLVAN KRAMER,
JOHN W. MORTON,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
PETITIONER,

vs,

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinions of the Courts Below.

The Opinion of the Chancellor, who tried the case, appears on page 12 of the Record. This Opinion is not reported.

The Opinion of the Supreme Court of Tennessee appears on pages 13-16 of the Record. This Opinion is published in 57 S. W. (2d) 455; 165 Tenn. —.

II.

Jurisdiction.

1. The date of the judgment to be reviewed is February 21, 1933 (Record p. 17).

2. The statutory provision, which it is believed sustains the jurisdiction of this Court, is U. S. C. Title 28, Sec. 344, there being set up in the pleadings and passed upon by the Supreme Court of Tennessee certain rights, privileges and immunities claimed under Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320, U. S. C. Title 38, Sec. 454).

3. The Supreme Court of Tennessee in this case held that property purchased by a veteran or the guardian of a non compos veteran of the World War, with funds received under the provisions of the World War Veterans Act, is taxable by the State and its subdivisions regardless of the exemption provided for in Section 22 of said Act. This decision is in conflict with the decisions of courts of last resort of other States.

Rucker v. *Merck*, 172 Ga., 793; 159 S. E., 501.
City of Atlanta v. *Stokes*, — Ga., —; 165 S. E., 270 (1932).

III.

Statement of the Case.

The facts are succinctly stated in the Petition for Writ of Certiorari and will not be here repeated. What is therein said is adopted and made a part of this brief.

IV.

Assignment of Errors.

Petitioner insists that the Supreme Court of Tennessee erred:

FIRST. The Supreme Court of Tennessee erred in holding that the property in question was not exempt from taxation.

This property was exempt from taxation under the express provisions of the World War Veterans' Act, which is referred to above.

V.

ARGUMENT.

(1) The Act of Congress.

Petitioner insists that by virtue of the express provisions of Section 22 of the World War Veterans' Act of 1924 (43 Stat. at L. 613, c. 320; U. S. C. Title 38, Sec. 454) the property here involved is exempt from taxation. This Section of this Statute reads as follows:

> "The compensation, insurance and maintenance and support allowance payable under parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under parts II, III, or IV; and shall be exempt from all taxation."

(2) The property here involved is compensation and insurance and was paid under Parts II and III of said Act.

The right and power to tax this property for the period involved in this record—that is, for the year 1929, must be determined according to the status of the property on January 10th of that year by Section 757 of Shannon's 1917 Code of Tennessee. (Acts of 1907, Chapt. 602, Sec. 31). Every dollar that had been invested in this property at that time by the Guardian, was derived from the money received by the Guardian for his ward from the United States Government, part of the same having been received as compensation and part thereof as disability benefits under a war risk insurance policy on the life of said veteran (Record p. 8).

Under these circumstances we most earnestly insist that the property is non-taxable.

In the case of *Rucker* v. *Merck,* 172 Ga. 793; 159 S. E. 501 (1931), the Supreme Court of Georgia speaks as follows:

> "The sole question in this case, as made by the petition for injunction to restrain the tax collector of Banks county from selling property of Merck, the petitioner, is whether Merck's land, which he alleges to have been purchased with money which he alleges to have been derived exclusively from pension payments made for military service to the United States government, is subject to levy for taxes. It appears to us that the enactment of the above federal statute is decisive of the question. So far as the evidence in the case goes, the judgment of the trial judge

was amply sustained by the testimony, not only of the veteran (Merck) himself, but of the former owner of the land from whom Merck purchased the property, and there is no contradiction that the entire purchase price was paid at the time the deed was made. That the fund was derived from the federal government in payment for military services is undenied. The mere fact that subsequently Merck borrowed money from Moss and Chandler, and gave a deed upon his land as security for his subsequent indebtedness, does not in any wise affect the undisputed fact that the land was originally purchased several months previously with funds paid him by the federal government in compensation for his services and wounds received in the World War. Under the federal statute this land is exempt from 'all taxation.' This regulation does not in any way affect the liability for taxes of any other property of which the defendant in error may be the owner. The federal law protects any property which is purchased with the proceeds of pension, war risk insurance, and other forms of compensation provided by the government. The exemption from taxation, of course, adds value to the governmental benefaction, and increases the net income derived from the investment of the fund given by the government to the soldier. In these days when taxes are extremely high (in some instances amounting to a greater per cent than the income from some government bonds) it is easily to be seen that the compensation is appreciated by the federal exemption from taxation. Furthermore, this act tends to encourage veterans of the World War to procure homes to shelter their heads in old age, instead of making speedy and foolish ex-

> penditures of the allotments which have been made them by the general government."

In the later case of *City of Atlanta* v. *Stokes*, — Ga., —; 165 S. E., 270 (1932), this question again came before the Supreme Court of Georgia and the same principle was reaffirmed.

See to the same effect *Payne* v. *Jordan*, 36 Ga. Apps., 787; 138 S. E. 260.

The case of *Wilson* v. *Sawyer*, 177 Ark., 492; 6 S. W., (2d) 825, is very much in point. In that case the guardian of a disabled soldier had received certain funds from the Government because of the disability suffered and had turned these funds over to the Clerk of the Court to be held for the ward. Part of the funds were deposited in a bank and the remainder was invested in notes. An attempt was made to garnishee the Clerk of the Court and the Bank for a debt owing by the veteran. The Court held:

> "Upon hearing this testimony the court quashed the garnishment, and in so doing declared the law as follows:
>
> "'The court will dissolve this attachment. I do not think these funds can be attached until they come into the hands of Tom Sawyer, and they have never been in his hands. They are money derived from the federal laws, those funds cannot be garnisheed until they come into the hands of the party entitled to receive under the law. These funds were paid by the United States Government to Mr. Wilson, as guardian. He has been discharged, and the funds have been paid over to the clerk of the

probate court, and the funds are now in the hands of the register of the court, with instructions to turn them over to Tom Sawyer, and, until they come into the hands of Tom Sawyer, they cannot be attached. The petition to quash the garnishment and release the funds will be sustained.'

"The court was correct in the declaration of law made, except that the funds were not subject to seizure, even after they had come into the hands of the ward."

* * * "We think the manifest purpose of the legislation making provision for World War veterans was to devote the benefactions there provided to the sole use of the beneficiaries, and that the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit."

In the case of *Yates County Bank* v. *Carpenter*, 119 N. Y., 550; 23 N. E., 1108; 7 L. R. A., 557, the New York Court of Appeals in passing upon a State statute similar to the provision of the Act of Congress here involved uses this language:

"If the soldier is not protected in the act of exchanging his pension for the necessaries of life, its only effect would be to enable his creditors to take it in satisfaction of their claims. No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted. The

plain purpose of the Act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors, and to insure him and his family a safe, although modest, maintenance so long as their needs require it. * * *

* * * * * * *

"The rule seems to be just and reasonable and within the spirit of the exemption. In the case of the exemption of money, or its equivalent, there has been some controversy in the courts with reference to the extent to which the exemption shall be carried. In such case it is somewhat difficult to lay down a rule in precise terms by which it may be determined in all cases what property is liable and what exempt from levy and seizure upon legal process for the payment of debts, but we entertain no doubt that where the receipts from a pension can be directly traced to the purchase of property, necessary or convenient for the support and maintenance of the pensioner and his family, such property is exempt under the provisions of this Statute.

"Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the Statute; but where they have been embarked in trade, commerce or speculation, and become mingled with other funds so as to be incapable of identification or separation, we do not doubt but that the pensioner loses the benefit of the statu-

tory exemption. These propositions, we think, are fully supported by the cases in this and other States."

We believe that the interpretation made of this provision in the World War Veterans Act in the cases just cited, is the only fair and reasonable construction that can be made thereof. To say that it was the intent of Congress to exempt these funds only while they were still payable is to deprive this section of any practical vitality and to leave it meaningless. It has been held repeatedly that even the insurance, for which the veteran paid a premium, is in the nature of a bounty.

Cassarolla, v. *U. S.*, 271 Federal, 486.
In re Starums Estate, 218 N. Y. S., 394.

This being true the veteran has no vested right in the funds until they are received by him. Having no vested right therein, they could not be subject to the claims of the veteran's creditors prior to the veteran's receipt of same. Unless the funds are exempt from the claims of creditors after they are actually received by the beneficiary, the words of the Statute "shall not be subject to the claims of creditors of any person to whom award is made," are meaningless. Also the words "shall be exempt from all taxation," are meaningless. Of course, these funds could not be subject to taxation in the hands of the Government, because so long as they remain with the Government the beneficiary has no vested right therein. Hence they could not be subject to taxation.

We insist, therefore, that the intent of Congress was to exempt these funds from taxation after they were in the hands of the beneficiary; and to give this exemption any practical effect it must be interpreted to include not only the funds themselves, but whatever is purchased with the funds, so long as the funds have not been so commingled with other funds as to make them incapable of identification.

Congress has recognized that veterans of our wars who have become disabled in mind or body as a result of such service, are wards of the Government. It is for this reason that the Congress has provided that such ex-service men shall receive a modest sum to care for themselves and their dependents. Congress, also realizing the truth of the statement made by Chief Justice Marshall that "the power to tax includes the power to destroy," has provided that the benefits bestowed upon these wards shall be exempt from all taxation. The very object of this provision is to prevent the States and their subdivisions from taking away from the wards by taxation, the benefits which Congress has bestowed upon them. As heretofore pointed out, the intent of Congress in protecting these disabled veterans will be defeated if this Legislation is so construed as to give the States the power to tax, and creditors the right to levy, upon these compensation and insurance benefits as soon as they reach the hands of the veteran or his dependents.

(3) **The veteran being a non compos and his property being handled by a guardian, such veteran has not actually received these compensation and insurance benefits, but they are in fact still "payable" to him.**

While we insist that the word "payable" as used in Section 454 of Title 38 U. S. C. does not have the same meaning as the words "due or to become due" as used in Section 54 of Title 38 U. S. C. (R. S. Sec. 4747), yet even if it should be so construed, it could not change the situation in cases like the present where the funds or property have not actually reached the hands of the veteran, but will be handled and controlled by a guardian. This property and any other funds of the ward, which are in the hands of the guardian, are due the veteran and if the veteran's mind should become restored, they must, of course, be accounted for to such veteran by the Guardian. We believe that it was, and is, the intention of the Congress to have these funds transmitted to the beneficiary absolutely unimpaired and that, therefore, at least until the funds reach the beneficiary in a manner in which he can handle and control them himself, they are exempt from all taxation. The fact that title to such funds is vested in the ward upon the payment thereof to the Guardian (*Spicer* v. *Smith*, decided by this Court on March 13, 1933, 77 L. Ed., 599), does not affect the question here discussed. It is not a matter of title, but the question is whether the funds have actually reached the veteran, himself. Undoubtedly in the case at bar, they have not reached the veteran and, therefore, are still due and payable to him—not by the Government, but by the Guardian.

We believe that it has been universally held that funds received by a guardian from the Federal Government under the Act here in question and under other similar Acts of Congress, are exempt from execution and garnishment while in the hands of such guardian.

See

Tama County v. *Kepler,* 187 Ia. 34; 173 N. W. 912.

Payne v. *Jordan,* 36 Ga. App. 787; 138 S. W. 262.

In re Murphy's Committee, 236 N. Y. S. 343; 134 Misc. Rep. 683.

The Statute contains the same provision with reference to exemption from taxation that it does with reference to exemption from attachment and execution and if the funds are exempt from execution while in the hands of the Guardian, we can see no reason why the property or funds should not be exempt from taxation while they are in the hands of, and being handled and controlled by the Guardian.

This Guardian was appointed under the Statutes of the State of Tennessee. He cannot hold the money he receives from the Government as such. It is a statutory duty to invest this money in some income producing property or security.

Shannon's Tennesse Code of 1917, Sec. 4280.

We can see no reason for holding that if the Guardian kept his ward's funds in moeny, such funds would be exempt from taxation, but that if he invested

this same money in notes or bonds, such notes or bonds should be taxed. It is the same compensation or disability insurance and can be traced and identified. If notes and bonds are exempt, we can see no logical reason for not exempting real estate purchased with the benefits received under this Veterans' Act.

(4) The fact that fifteen hundred ($1,500.00) dollars was paid on this property in March, 1929, out of the proceeds received from a fire insurance policy does not affect the questions here involved.

We have heretofore shown that the taxes involved in this proceeding are for the year 1929 and they are assessed and become a lien on the property as it existed on January 10th of that year. Any later change in the nature of the property or its condition, does not affect the property for that year. The money from the fire insurance policy was not paid on this property until March 26, 1929 (Record p. 8). In other words, the entire consideration paid for said property as it stood at the time these taxes became a lien, was paid out of funds received by the Guardian from the Federal Government under the World War Veterans' Act. There was a deed of trust against the property for Fifteen Hundred ($1,500) Dollars. This was assumed by the Guardian and was to be paid at maturity out of funds received by the Guardian from the Government. The record discloses that the entire estate of this ward consisted of benefits received from the Government (Record p. 10).

There can be no question, therefore, but that the entire purchase price of this property, both that which

had already been met and that which was yet to accrue, was being paid out of funds received under the Act here in question uncommingled with any other funds.

The fact that the Fifteen Hundred ($1,500) Dollars mortgage was later paid off from the proceeds of the fire insurance policy, is immaterial because said insurance was collected from certain buildings which were destroyed on said property, and the premiums for said insurance were paid out of the Guardian funds (Record p. 8).

Therefore these funds were also the result of accruals from benefits received under the World War Veterans' Act. However, as above pointed out, this Fifteen Hundred ($1,500) Dollar payment was immaterial to the question here involved because it was made subsequent to the time that this tax lien became fixed.

VI.

Conclusion.

It is therefore, respectfully submitted that it was the intention of Congress, as shown by the history of legislation governing pensions and gratuities, and as recognized by the decisions of the various courts, to absolutely exempt from all taxation these funds, irrespective of the form in which they are held by the guardian, the veteran or the beneficiary, so long as said funds have not been commingled so as to lose their identity.

It is, therefore, respectfully submitted that the decision of the Supreme Court of Tennessee on this question is erroneous and that this case is one calling for the exercise by this Court of its supervisory powers, by granting a Writ of Certiorari and thereafter reviewing and reversing said decision.

RUSSELL R. KRAMER,
Counsel for Petitioner.

(3424)

TABLE OF CONTENTS

	Page
Preliminary Statement	1
Summary of Argument	2
Argument	3-29
Point One: A proper construction of World War Veterans Act exempts benefits thereof from taxation in hands of beneficiary or his guardian	3-18
Point Two: Property here involved is compensation and insurance received by guardian under Parts II and III of World War Veterans Act and is exempt from State, County and Municipal taxation	18-22
Point Three: The compensation and insurance is still payable to the veteran because entire control and management is in hands of the guardian	22
Point Four: Congress has power under the Constitution to exempt pensions, compensation and insurance from State and Municipal taxation, therefore, Section 22 of World War Veterans Act of 1924 is not unconstitutional	29
Conclusion	29

TABLE OF CASES

Page

Buchanan v. Alexander, 4 Howard 20, 11 L. Ed. 857 4

Choctaw O. & G. R. Co. v. Harrison, 235 U.S. 292, 59 L. Ed. 232, 35 Sup. Ct. Rep. 27 24

City of Atlanta v. Stokes, —Ga.—, 165 S.E. 270 ..... 5, 7, 19, 24

Cranz v. White, 27 Kansas 319, 41 Am. Rep. 408....14, 15

Dwight & Lloyd Co. v. American Ore Co., 263 Fed. 315 5

Funk v. Luithle, 58 N.D. 416, 226 N.W. 595 9

Gillespie v. Oklahoma, 257 U.S. 501, 66 L. Ed. 338, 42 Sup. Ct. Rep. 171 28

In re: Cross Estate, 152 Wash. 459, 278 p. 414..... 10

In re: Estate of Jacob Hallbom, 179 Minn. 402, 229 N.W. 344 ..... 5, 7

In re: Harris Estate, —Minn.—, 229 N.W. 781 16

In re: Wanzell's Estate, 291 Pa. 419, 145 A. 512.... 10

Manning v. Spry, 121 Iowa 191, 96 N.W. 873 27

Martin v. Guilford County, 201 N.C. 63, 158 S.E. 847, 76 A.L.R. 978 ..... 12, 13

McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579 ..... 13, 24

McIntosh v. Aubrey, 185 U.S. 122, 46 L. Ed. 834, 22 S. Ct. 561 ..... 14, 16

Mutual L. Ins. Co. v. Wisconsin, 275 U.S. 136, 72 L. Ed. 202, 48 Sup. Ct. Rep. 55 24

Panhandle Oil Co. v. Mississippi, 277 U.S. 218, 77 L. Ed. 857 ..... 24, 27

Rucker v. Merck, 172 Ga. 793, 159 S.E. 501.... 5, 7, 19, 25

Spicer v. Smith, 288 U.S.—, 77 L.Ed. 599..... 12, 17

State, ex rel Smith v. Board of Commissioners of Shawnee County, 132 Kan. 233, 294 P. 915.. 12, 13

Surace v Danna 248 N.Y. 18, 161 N.E. 315

TABLE OF CASES—Cont.

Page

State v. Wright, —Ala.—, 140 So. 584 12

Succession of Geier, 155 La. 167, 99 So. 26, 32 A.L.R. 353 ..... 10, 11

Tax Commission v. Rife, 119 Ohio State 83, 162 N.E. 390 10

United States v. Hall, 98 U.S. 343, 25 L. Ed. 180.... 21, 28

United States v. Lexington Mill Co. 232 U.S. 399, 58 L. Ed. 658 5

Washington Market Co. v. Hoffman, 101 U.S. 112, 25 L. Ed. 782 5

Watkins v. Hall, 107 W.Va. 202, 147 S.E. 876 10

Wilson v. Sawyer, 177 Ark. 492, 6 S.W. (2d) 825....5,19

Yates County Bank v. Carpenter, 119 N.Y. 550, 23 N.E. 1108, 7 L.R.A. 557 19

STATUTES

Acts of Tennessee Legislature 1907, Chapter 602, Sec. 31 18

Civil War Pension Act of March 3, 1873, c 234, Sec. 33,17 Stat. 576, R.S. Sec. 4747, U.S.C. Title 38, Sec. 54 ..... 14, 15

Constitution of the United States, Article I, Sec. 8 23

World War Veterans Act of 1924, Sec. 22 (43 Stat. at L. 613, c 320, U.S.C. Title 38, Sec. 454) 2, 3, 11, 22

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 79.

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
Petitioner,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE,
Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONER.

I.

PRELIMINARY STATEMENT.

The facts upon which this controversy arises are set forth fully in petitioner's original brief, but we desire to discuss a little more thoroughly than we did in the original brief, the reasons relied upon by petitioner in support of his position and to call

the attention of the Court to the authorities which we believe sustain his contention. We also desire to analyze briefly the authorities relied upon by the respondent. Petitioner, therefore, asks leave to file this supplemental brief.

II.

SUMMARY OF ARGUMENT.

Point One. A proper construction of Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 454) exempts from taxation the compensation, insurance, and maintenance and support allowance after the same have been received by the beneficiary thereof or his guardian.

Point Two. The property here involved is compensation and insurance which was received by the guardian under Parts II and III of the World War Veteran's Act of 1924 and is therefore exempt from State, County, and Municipal taxation.

Point Three. In the present case the compensation and insurance is still *payable* to the veteran in as much as the entire control and management thereof is in the hands of the guardian and the fund has never reached the veteran.

Point Four. The Congress has the power under the Federal Constitution to exempt from State, County, and Municipal taxation the pensions, compensation, insurance, etc., that it bestows upon its

war veterans and therefore Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 454) which exempts such funds from taxation, is not unconstitutional.

III.

ARGUMENT.

(1) Point One.

A proper construction of Section 22 of the World War Veterans Act of 1924 (43 *Stat. at L.* 613, *c* 320; *U.S.C. Title* 38, *Sec.*. 454) *exempts from taxation the compensation, insurance, and maintenance and support allowance after the same have been received by the beneficiary thereof or his guardian.*

This section of the Statute, reads as follows:

> "The compensation, insurance and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable."

We believe that the only fair and reasonable construction which can be made of this language is that the compensation, insurance, and maintenance and

support allowance are exempt from the claims of creditors and from taxation after such funds have reached the beneficiary or his guardian. In our original brief it was stated that this portion of the Statute is practically meaningless unless it is given the construction here insisted upon.

It is conceded by the State of Tennessee that until the funds are paid to the beneficiary or the guardian, they are exempt. But of what value is this language in the Statute if this is as far as the exemption extends? Without this clause in the Statute, these funds could not be reached by the creditors of the veteran nor taxed as his property until they were actually paid over to him or his guardian, because until such time they cannot be considered as a part of his effects.

In *Buchanan vs. Alexander*, 4 *Howard* 20; 11 *L. Ed.* 857, it is said:

> "The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects."

It is a rule of statutory construction that all the

words of a law must have effect, rather than that a part of them should perish and be meaningless.

Dwight & Lloyd Co. vs. American Ore Co., 263 *Fed.* 315.

Washington Market Co. vs. Hoffman, 101 *U. S.* 112, 115; 25 *L. Ed.* 782, 783.

United States vs. Lexington Mill Co., 232 *U. S.* 399, 410, 58 *L. Ed.* 658, 662, —*S. C. Rep.*—.

If this rule of statutory construction is followed we believe it inevitable that this Section of the Act be given the construction insisted upon by petitioner.

While the Supreme Court of Tennessee has held in the instant case that this construction of the Act of Congress is not justified by the language of said Act, the highest courts of a number of other States sustain the position taken by the petitioner.

In Re: Estate of Jacob Hallbom, 179 *Minn.* 402, 229 *N.W.* 344.

Rucker vs. Merck, 162 *Ga.* 793, 159 *S.E.* 501.

City of Atlanta vs. Stokes, —*Ga.*—, 165 *S.E.* 270. (1932).

Wilson vs. Sawyer, 177 *Ark.* 492, 6 *S.W.* (2*d*) 825.

The Arkansas case, cited just above, was one in which the guardian of a disabled soldier had received certain funds from the Government under the World War Veterans Act of 1924 and had turned

these funds over to the Clerk of the Court to be held for the ward. Part of the funds were deposited in a bank and the remainder invested in notes. An attempt was made to garnishee the Clerk of the Court and the bank for a debt owing by the veteran. The trial court held that the funds were not subject to garnishment because they had not been received by the ward and therefore dissolved the attachment. The Supreme Court in passing upon this question said:

> "The Court was correct in the declaration of law made, except the funds were not subject to seizure, even after they had come into the hands of the ward.
>
> * * * * * We think the manifest purpose of the legislation making provision for World War Veterans was to devote the benefactions there provided for the sole use of the beneficiaries, and that *the same should not be subject to the demands of creditors, even after the money had come into their hands, or was held by another for their benefit.*" (Italics ours).

While the Wilson case just quoted from, deals with the provisions of Section 22 of the World War Veterans Act of 1924 which exempts compensation, insurance, etc., from the claims of creditors of the person to whom the award is made, and the case at bar deals with the provision of Section 22 which exempts such funds from taxation, yet the same principle must apply, and if the funds are free from the claims of creditors in the hands of the beneficiary, they must also be exempt from taxation in his hands.

In line with this holding is the case of *In Re*:

Estate of Jacob Hallbom, 179 *Minn.* 402, 229 *N.W.* 344, the precise issue was whether the insurance money of a deceased veteran was subject to the debts of the deceased after such money had been paid to the administrator of his estate. After a somewhat full consideration of the question, the Court held that creditors could not reach this fund.

In the two Georgia cases referred to above, the identical question here involved was before the Supreme Court of that State. There, as here, the money received from compensation and insurance under the World War Veterans Act had been invested in real estate. The case of *Rucker vs. Merck*, 172 *Ga.* 793; 159 *S.E.* 501, which was decided in June 1931, is quoted from quite extensively in our original brief and, therefore, we now quote only from the syllabus thereof in which it is said:

> "Land purchased with funds received from war insurance and allowance for military service, is exempt from taxation under Section 22 of the World War Veterans Act of 1924, 43 Stat. at L. 613; c 320; U.S.C. Title 38, Section 545."

The same question came before the Supreme Court of Georgia again in July, 1932, in the case of *City of Atlanta vs. Stokes, reported in* —*Ga.*—, 165 *S.E.* 270. The Court gave a very elaborate opinion and after analyzing the cases from all the other States, reaffirmed its previous holding. We believe that some of the observations of the Court in thus reaffirming its previous holding, may be appropriately quoted:

"The conclusion of the majority in Rucker v. Merck, supra, was not hastily reached, nor was it expressed without due deliberation. It is true that no extended elaboration or explanation of the federal statute under consideration was entered into, because sometimes the language of the statute is so plain and unambiguous that construction would seem to be unnecessary. In dealing with the case at that time, the majority of the court was of the opinion that the words 'shall be exempt from all taxation' were reasonably plain. It seems now that the word 'payable' is the axis upon which the wheels of construction revolve. The members of the court who differ with me say that it is obvious that this means that the proposed donations are exempt from taxation while they remain in the hands of the government. It is true the courts of a few states have so held. The rulings are cited in the dissenting opinion. We cannot join in this distinction, because we cannot agree that Congress was so ignorant that they were not already acquainted with the fact that funds of the government, its own money, in the hands of its own officers, were altogether exempt from all taxation already, without the necessity of any additional protection. In using the word 'payable,' the ordinary man, without consulting a dictionary, understands that the affix 'able' means that which can or may be, or shall be, or must be in future paid. It therefore denotes that this money, which will be paid to some one and to all of the beneficiaries of the federal legislation, shall be exempt from all taxation after it has been paid and reaches the hands of the beneficiaries. That principle was asserted in Payne v. Jordan, 152 Ga. 367, 110 S.E. 4, in which Mr. Justice Hill, delivering the opinion

> of the court, held that money which had been paid to a beneficiary under this same law, and after having been paid, and the funds being no longer due, but which had been by the beneficitary deposited in a bank, was not subject to garnishment. * * * * * It is therefore unnecessary for us to define the future aspects of the word 'payable' as used in the statute before us. It needs only to be remarked in passing that the use of words denoting future action, in almost all of the penal statutes of this state, does not exempt from the punishment designed by law one who does any of the acts for which penalties are proposed in future."

In the case of *Funk vs. Luithle*, 58 *N.D.* 416, 226 *N.W.* 595, the Supreme Court of North Dakota had under consideration the question of whether the proceeds of a war risk insurance policy, which had been paid to the administrator of the estate of the mother of the deceased veteran, were exempt from the claims of creditors. The Court held that these proceeds were not exempt from such claims against the estate of the deceased mother, but in the course of its opinion remarked that such proceeds could not be reached by the creditors of the deceasd soldier.. The Court used the following language:

> "Appellant says that section 454 of USCA title 38, which provides: 'Compensation, insurance, and maintenance and support allowance * * * * shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under parts II, III, or IV; and shall be exempt from all taxation' is applicable to this case. This is error, how-

> ever. Such section would be applicable to cases where creditors of the deceased soldier were attempting to enforce claims against his estate, and sought to subject this fund as his estate to the payment of their claims."

In *Succession of Geier*, 155 *La.* 167, 99 *So.* 26, 32 *A.L.R.* 355, where the question was one as to exemption from State Inheritance Tax of insurance money received under the War Risk Insurance Act, the Court expressed itself unequivocally to the effect that the benefits conferred by this Act are exempt from all taxation, saying,

> "The terms of the Act are clear and unambiguous. Summarizing its provisions, there is a positive prohibition against all taxation on money paid out by the Federal Government under Section 28, Articles 2, 3 and 4."

We might also call the attention of the Court to a line of cases which hold that the proceeds of war risk insurance paid over by the Government to the administrator of the estate of a deceased soldier, are not subject to a State Inheritance Tax.

Tax Commission vs. Rife, 119 *Ohio State* 83, 162 *N.E.* 390.

In Re: Cross Estate, 152 *Wash.* 459, 278 *P.* 414.

In Re: Wanzell's Estate, 291 *Pa.* 419, 145 *A.* 512.

Watkins vs. Hall, 107 *W. Va.* 202, 147 *S.E.* 876.

To these might be added the case of *Succession of Geier*, 155 *La.* 167, 99 *So.* 26, 32 *A.L.R.* 353, to which we have referred to above.

In these inheritance tax cases the exemption is generally placed on two grounds: First, that the exemption from taxation provided in Section 22 of the World War Veterans Act is applicable; Second, that the persons entitled to the payments do not take as heirs of the deceased soldier, or of the primary beneficiary, but take as beneficiaries under the War Risk Insurance Act and under the contract between the Government and the soldier.

So far as these cases rely upon the first ~~group~~ ground of exemption referred to, they are undoubtedly an authority to sustain the contention of the petitioner in the case at bar. If by virtue of Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320, U.S.C. Title 38, Section 454), the proceeds of a policy of war risk insurance is exempt from State Inheritance Tax after it has been paid by the Government to the administrator of the estate of a deceased soldier, under the same line of reasoning it must be exempt from all other taxation when it is paid over to the veteran himself, or to the guardian of a veteran, or to a dependent of a deceased veteran. In other words, when the Government pays the war risk insurance to the administrator of the estate of the deceased veteran, title to such fund is divested out of the Government and such payment has "operated to discharge the obligation of the United States in this respect" to such

sums, (Spicer vs. Smith, 288 U.S.—, 77 L. Ed. 599) and the fund is, of course, no longer "payable" by the Government. The Government stands in the same plight with reference to the administrator in such a case concerning the funds it has paid unto him as it stands with reference to the guardian in the case at bar concerning the funds that he has received as compensation and war risk insurance. It cannot be said that funds in the hands of an administrator in such a case are exempt from a State Inheritance Tax because they are still "payable" by the Government and, therefore, these inheritance tax cases cannot be reconciled with the line of decisions relied upon by the respondent in the case at bar.

On behalf of the respondent, it is insisted that the meaning of Section 22 of the World War Veterans Act, *supra*, properly construed, means only to exempt the funds mentioned therein so long as they remain in the hands of the Government and are "payable" by it to the party entitled thereto. Reliance is had upon three cases to support this contention, viz: *State vs. Wright*, —*Ala.*—, 140 *So.* 584; *Martin vs. Guilford County*, 201 *N.C.* 63, 158 *S.E.* 847, 76 *A.L.R.* 978, and *State, ex rel Smith vs. Board of Commissioners of Shawnee County*, 132 *Kan.* 233, 294, *P.* 915.

The case of State vs. Wright contents itself with the broad general statement that "it is clear that the exemption applies only to 'compensation, insurance, and maintenance and support allowance,' 'ad-

justment certificates', and 'sums payable' under the Act of Congress and does not extend to privately owned property purchased with money arising from such sources and which was at the time of its purchase within the jurisdiction of the State and subject to its powers of taxation." It cites as authority for this statement *Martin vs. Guilford County, supra, State, ex rel Smith vs. Board of Commissioners of Shawnee County, supra, McCulloch vs. Maryland,* 4 *Wheat,* 316, 4 *L. Ed.* 579, and two Iowa cases.

The case of McCulloch vs. Maryland is admittedly an outstanding case on the question of taxation, but it in no wise construes a statute similar to the one here in qusetion. The two Iowa cases cited are also without application and are not based upon construction of any such statutes. The North Carolina and Kansas cases referred to as authority by the Alabama Court are hereinafter discussed.

The case of *Martin vs. Guilford County,* 201 *N.C.* 63, 158 *S.E.* 847, is based entirely upon the Kansas case of State, ex rel Smith vs. Board of Commissioners of Shawnee County, which is hereinafter referred to. No independent line of reasoning is set out in the opinion, which consists largely of a recitation of the facts involved in the Kansas case and a quotation from the Supreme Court in that case.

We, therefore, pass to the case of *State, ex rel Smith vs. Board of Commissioners of Shawnee County,* 132 *Kansas* 233, 294 *P.* 915, and which was decided on January 10, 1931. In this case the agreed

statement of facts showed that the guardian had collected $1271.00 in compensation under the World War Veterans Act from the United States Government and this had been invested by him in certain stock of the Chile Copper Company, a private corporation; that he later sold this stock at a price sufficient to enable him to buy $5,000.00 of bonds issued by the same Company. These bonds were assessed for taxation. Whether these bonds were exempt from taxation was the question before the Court, it being insisted by the guardian that the bonds were the proceeds of compensation received by him and exempt under Section 22 of the World War Veterans Act of 1924, *supra*. The Court held that such property was not exempt from taxation on the theory that the exemption provided for by Section 454 of U.S.C. continued only so long as the funds referred to remained "payable" by the Government and that after such funds had been paid to the beneficiary or guardian, this section had no application. This decision is based largely upon the earlier Kansas case of *Cranz vs. White*, 27 *Kansas* 319, 321, 41 *Am. Rep.* 408, and upon the case of *McIntosh vs. Aubrey*, 185 *U.S.* 122, 46 *L. Ed.* 834, 22 *S. Ct.* 561. Both of these cases construed the Civil War Pension Act, being Act of March 3, 1873, c 234, Sec. 33, 17 Stat. 576, R.S. Sec. 4747; U.S.C. Title 38, Sec. 54. The section of the previous Pension Act there construed, reads as follows:

> "No sum of money due, or to become due, to any pensioner shall be liable to attachment,

> levy, or seizure by or under any legal or equitable process whatever, whether the same remain with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such petitioner."

In the two cases just referred to this Court and the Supreme Court of Kansas construed this language to mean that pension money was not exempt in all its situations, but only under one condition, to-wit: when "due or to become due." This construction of U.S.C. Title 38, Sec. 54 was undoubtedly correct. As was said in *Cranz vs. White, supra,*

> "The protection is to an undelivered sum of money. This, which is implied in the first words of the section, is made more clear by its after language, for it prohibits seizure whether this sum of money due or to become due remains with the pension office or an officer or agent thereof, or in course of transmission to the pensioner entitled thereto. To guard against any abuse or destruction, it thus specifies the various positions which money due or to become due can occupy, and in effect declares that pension money shall not be interrupted on its way to the pensioner. The last clause of the section, which reads, 'but shall inure wholly to the benefit of such pensioner,' is qualified by and must be read in the light of the preceding words of the section. It is comprehensive language, but it is only language strengthening and marking more plain the intention of the preceding words. It applies to money due or to become due, and not to money paid and in possession."

While the Supreme Court of Kansas in State, ex rel vs. Board of Commissioners of Shawnee County, attempts to give unto Section 22 of the World War Veterans Act of 1924 a similar construction, we believe such position is untenable. In the Act now under consideration, there are no words of similiar import to the words "whether the same remains with the pension office or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto," which are found in the previous Statute. It seems to us that to give the word "payable" as used in the World War Veterans Act of 1924 the same construction as was given to the words "due or to become due" as used in the Act of 1873, is placing upon this word "payable" a badly strained construction and one not at all justified by the context of the Section.

The Supreme Court of Minnesota in *In Re: Harris Estate*, —*Minn.*—, 229 *N.W.* 781, *page* 782-783, expressly holds that the case of McIntosh vs. Aubrey, *supra*, cannot be applied to the construction of the present Statute. The following language, which it uses, has equal application to the Kansas case of Cranz vs. White, *supra*:

> "The case of McIntosh v. Aubrey, 185 U.S. 122, 22 S. Ct. 561, 46 L. Ed. 834, cited in the Schaffer Case, supra, does not here apply. There, real property was claimed to be exempt from debts of the owner because she had purchased same with money received by her as a pension as the widow of a deceased soldier. The exemption there considered was exemption

> from seizure or sale of money due or to become due as a pension while the same remained in the pension office or in the hands of any officer or agent of the pension office. The court held that the exemption applied only while the fund was in the course of transmission to the pensioner, and did not apply to property some time thereafter purchased by the pensioner with the pension money."

The case of *Surace* v. *Donna,* 248 N. Y. 18, 161 N. E. 315, is, we believe, very much in point. In that case the court had under consideration the exemption provision of the New York Workmen's Compensation Statute. The exemption provision of that statute reads as follows:

> "Compensation or benefits due under this chapter shall not be assigned, released, or commuted except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived."

The injured employee had received certain compensation from his employer which had been deposited in a bank and his creditor sought to reach the same. The employee claimed exemption of the fund under the statute quoted. In passing upon the question the court said:

> "By concession the moneys due under the award would have been exempt from the pursuit of creditors before they reached the judgment

debtor. The argument is, however, that they became subject to seizure the instant they were paid. If this is so, the exemption is next to futile. All that a creditor has to do is to obtain an order in supplementary proceedings, containing, like the order in this proceeding, the usual provision restraining the judgment debtor from making any transfer or disposition of his property until further directions in the premises. Then, as the installments of an award are paid, the injunction will tie them up. They may be appropriated to the last dollar in satisfaction of an ancient debt. They will no longer be a fund for the support of the indigent and helpless.

"So narrow a construction thwarts the purpose of the statute. The Workmen's Compensation Law was framed to supply an injured workman with a substitute for wages during the whole or at least a part of the term of disability. He was to be saved from becoming one of the derelicts of society, a fragment of human wreckage (*Matter of Post* v. *Burger & Gohlke*, 215 N. Y. 544; *N. Y. C. R. R. Co.* v. *White*, 243 U. S. 188, 197). He was to have enough to sustain him in a fashion measurably consistent with his former habits of life during the trying days of readjustment. The cost of such support becomes a charge upon the industry without regard to fault. Rehabilitation of the man, not payment of his ancient debts, is the theme of the statute, and its animating motive.

"The exemption must have a meaning consistent with the policy behind it. Few words are so plain that the context or the occasion is without capacity to enlarge or narrow their exten-

sion. The thought behind the phrase proclaims itself misread when the outcome of the reading is injustice or absurdity (*Smith* v. *People*, 47 N. Y. 330, 341, 342; *Matter of Meyer*, 209 N. Y. 386, 389). Adherence to the letter will not be suffered to 'defeat the general purpose and manifest policy intended to be promoted' (*Spencer* v. *Myers*, 150 N. Y. 269, 275; *People ex rel. Wood* v. *Lacombe*, 99 N. Y. 43; *Matter of Folsom*, 56 N. Y. 60, 66; *Kent's Comm.* 462). We are told that the word 'due' must be held to limit the exemption to compensation owing and unpaid. But 'due,' like words generally (*Towne* v. *Eisner*, 245 U. S. 418, 425; *Int. Stevedoring Co.* v. *Haverty*, 272 U. S. 50), has a color and a content that can vary with the setting. Compensation due under an act may be a payment presently owing, or one to become due in the future, or one already made, but made because due, *i. e.*, required or commanded (*cf. Allen* v. *Patterson*, 7 N. Y. 476; *U. S.* v. *State Bank of North Carolina*, 6 Pet. (U. S.) 29, 36). If the narrower meaning is the commoner, the broader does not strain the word beyond the limits of construction. A workman holding in his hands a payment made by his employer or an insurance carrier in satisfaction of an award might say not inappropriately that the money so received was due under the statute. The argument is not compelling that some of the prohibited acts—assignment, release, commutation—apply to compensation before the stage of payment, because impossible thereafter. This does not mean that other acts—execution, attachment, supplementary proceedings—appropriate or possible in later stages must be fitted to the same mould. The maxim

'*reddendo singula singulis*' supplies the applicable rule.

* * * * * * * *

"In these circumstances, our decision in *Yates County National Bank* v. *Carpenter* (119 N. Y. 550) supplies the applicable rule. *Code of Civil Procedure*, Section 1393 (now Civ. Prac. Act, Sec. 667), exempts from execution a 'pension * * * heretofore or hereafter granted by the United States * * * for military * * * services.' We were asked to limit this exemption to the pension or the pension moneys before payment by the government. We held that it protected moneys collected by the pensioner. We even extended the immunity to a dwelling house and lot in which the moneys were invested. * * *"

Mr. Justice Cardozo in the same opinion made the following reference to the opinion in *McIntosh* v. *Aubrey, supra:*

"* * * Thus *McIntosh* v. *Aubrey* (185 U. S. 122) and *Kellogg* v. *Waite* (12 Allen, 529) construe a Federal statute which exempts a 'sum of money due, or to become due, to any pensioner.' The statute itself supplies a gloss upon the meaning. The money is to be exempt 'whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto.' (R. S., Sec. 4747.) The implication is not difficult that the exemption is to cease when the transit has been ended. * * *"

Conceding unto the Supreme Court of Kansas that high regard to which its decisions are entitled, we respectfully insist that its conclusion reached in State ex rel. *v.* Board of Commissioners of Shawnee County is not sound; that the word "payable" as contained in Section 22 of the World War Veterans' Act of 1924 is used to designate the source from which are derived the funds specified as exempt from taxation and the claims of creditors, and that that word as there used is not a limitation upon the time at which, or the circumstances under which, such funds are exempt.

To put it in other language, the words of exemption as used in this statute are generically descriptive of funds which have their origin in the provisions of parts 2, 3, and 4 of the Act and these words are used to differentiate funds which a veteran shall become entitled to receive, or shall receive, or has received, under this Act from other funds of his, derived or which may be derived from some other source.

It is generally conceded that statutes relating to pensions should be liberally construed with a view of promoting their purposes and it cannot be denied that one of the purposes of the provisions of the World War Veterans Act now under consideration was to safeguard the beneficiaries in the receipt and use of the payments made to them thereunder. In fact this Court has so held in *Spicer vs. Smith*, 288 *U. S.* —, 77 *L. Ed.* 599, where it is said:

> "The provisions for exemption, nonassignability and suspension of payments plainly im-

> ply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit."

When these principles are taken into consideration, the conclusion seems inescapable that under a proper construction of Section 22 of the World War Veterans Act of 1924 compensation, insurance, and maintenance and support allowances are exempt from taxation after the same have been received by the beneficiary or his guardian.

(2) Point Two.

The property here involved is compensation and insurance which was received by the guardian under Parts II and III of the World War Veterans Act of 1924 *and is therefore exempt from State, County, and Municipal taxation.*

As pointed out in our original brief, (page 10) the right and power to tax the property here involved must be determined according to the status of that property on January 10, 1929 (Acts of Tennessee Legislature 1907, Chapter 602, Section 31). Every dollar that had then been invested in this property by the guardian was derived from the money received by him for his ward from the United

States Government either as compensation or as war risk insurance. (Record page 8).

Under these circumstances we do not believe it will be seriously contended that this property is taxable if the compensation and insurance are exempt from taxation after they have been received by the veteran or his guardian.

In the case of *Wilson vs. Sawyer*, 177 *Ark.* 492, 6 *S.W.* (2*d*) 825, part of the property held exempt from garnishment and attachment by virtue of provisions of the Act we are now discussing had been invested in notes.

In the cases of *Rucker vs. Merck*, 172 *Ga.* 793, 159 *S.E.* 501 *and City of Atlanta vs. Stokes*, —*Ga.* —, 165 *S.E.* 270, the property held exempt from taxation under this Statute was in like condition as the property in the case at bar—that is, it consisted of real estate purchased with compensation and war risk insurance which had been received from the United States Government.

In *Yates County Bank vs. Carpenter*, 119 *N.Y.* 550, 23 *N.E.* 1108, 7 *L.R.A.* 557, the New York Court of Appeals had under consideration a State Statute containing provisions similar to those in the World War Veterans Act. In discussing that statute on this particular question the Court said:

> "If the soldier is not protected in the act of exchanging his pension for the necessities of life, its only effect would be to enable his creditors to take it in satisfaction of their claims.

No benefit is conferred if the protection is not extended beyond the possession of the money itself, for its only value consists in its purchasing power, and if the soldier is deprived of that, the pension might as well, so far as he is concerned, have remained ungranted. The plain purpose of the Act was to promote the comfort of the soldier; to secure to him the bounty of the government free from the claims of creditors, and to insure him and his family a safe, although modest, maintenance so long as their needs required it. * * * * * * * .

* * * * * "We entertain no doubt that where the receipts from a pension can be directly traced to the purchase of property, necessary or convenient for the support and maintenance of the pensioner and his family, such property is exempt under the provisions of this Statute."

"Where such moneys can be clearly identified and are used in the purchase of necessary articles, or are loaned or invested for purposes of increase or safety, in such form as to secure their available use for the benefit of the pensioner in time of need, we do not doubt but that they come within the meaning of the Statute; but where they have been embarked in trade, commerce or speculation, and become mingled with other funds so as to be incapable of identification or separation, we do not doubt but that the pensioner loses the benefit of the statutory exemption. These propositions, we think, are fully supported by the cases in this and other States."

We believe that such an interpretation is the only fair and reasonable construction that can be made

of such legislative provisions as are found in Section 22 of this Act. The only way to protect the interest of the veterans and their dependents is to secure to them the use of the gratuity or bonus granted them. That it has been the purpose of this government from its earliest times down to the present to secure to the beneficiaries of a pension such exclusive use and benefit thereof can not be doubted. In referring to this question this Court in *United States vs. Hall*, 98 *U.S.* 343, 346, 25 *L. Ed.* 180, 183, used the following language:

> "Without more, these selections from the almost innumerable list of Acts passed granting pensions are sufficient to prove that throughout the whole period since the Constitution was adopted it has been the policy of Congress to enact such regulations as will secure the beneficiaries of the pension granted the exclusive use and benefit of the money appropriated and paid for that purpose. Other legislation of Congress may also be referred to, confirming that proposition.
>
> "Pensioners of the kind are, in certain aspects, wards of the United States, and the legislation of Congress already reviewed shows that the National Legislature has been constant and vigilant in endeavors to protect their interest and secure to them the use of the annuities and pensions granted in their behalf."

The fact that the proceeds of a certain fire insurance policy were paid on this property in March, 1929, can not affect the question now under discus-

sion, as was pointed out in pages 19 and 20 of our original brief.

(3) Point Three.

In the present case the compensation and insurance is still payable to the veteran in as much as the entire control and management thereof is in the hands of the guardian and the fund itself has never reached the veteran.

We believe that this point was fully covered in our original brief (Pages 17-19). We shall not lengthen this brief by repeating what was said therein but we kindly ask the Court to refer thereto.

(4) Point Four.

The Congress has the power under the Federal Constitution to exempt from State and Municipal taxation the pensions, compensation, insurance, etc., that it bestows upon its war veterans and therefore Section 22 of the World War Veterans Act of 1924 (43 Stat. at L. 613, c 320; U.S.C. Title 38, Sec. 445) which exempts such funds from taxation, is not unconstitutional.

It is intimated, though not argued extensively, in the brief filed by the respondent that Congress does not have the power to exempt from State and

Municipal taxation such funds as those now under discussion. We did not mention this question in our original brief and hence it is proper that we should call the attention of the Court to a few of the authorities which we believe clearly show that the Congress has such power.

It is not necessary to cite authorities to sustain the power of the Federal Government to grant pensions and gratuities to its ex-service men. The only question involved here is whether Congress by exempting from all taxation the gratuities it grants to its ex-service men and their dependents, has exceeded the express or implied powers granted unto it under the Constitution.

It is the position of the petitioner that the Federal Government has such authority under the war powers granted unto Congress in Article I, Section 8 of the Constitution; that by virtue of the authorization therein contained this exempion from taxation is legal; and that by virtue of Article VI of the Constitution, the Statue by which it was enacted —that is, Section22 of the World War Veterans Act of 1924, is supreme and must control over any state tax law.

It has been repeatedly held by this Court that:

> "The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

McCulloch vs. Maryland, 4 *Wheat* 316, *p.* 436, 4 *L. Ed.* 579, 606.

Choctaw O. & G. R. Co. vs. Harrison, 235 *U.S.* 292, 59 *L. Ed.* 232, 35 *Sup. Ct. Rep.* 27.

Mut. L. Ins. Co. vs. Wisconsin, 275 *U.S.* 136, 72 *L. Ed.* 202, 48 *Sup. Ct. Rep.* 55.

Panhandle Oil Co. vs. Mississippi, 277 *U.S.* 218, 72 *L. Ed.* 857, 48 *Sup. Ct. Rep.* 451.

No power granted unto the Federal Government is more important and more necessary to its existence than its power to declare war, to raise and support armies and to provide and maintain a navy. Without these powers, of course, no government could exist and it is vitally important that the Federal Government shall have the right and power to determine, even to the minutest detail, by what measures and in what manner a war shall be begun, carried on, and concluded.

In *City of Atlanta vs. Stokes*, —*Ga.*—, 165 *S.E.* 270, in which was questioned the power of the Federal Government to exempt these gratuities from State taxation, the Supreme Court of Georgia, speaking through Chief Justice Russell, said:

> "To maintain the power to wage war, it is as much essential to the morale of the troops of a government that those who face death upon the field of Mars should have the right to anticipate rewards in the future, especially if they have been victorious, as to expect that they

will receive the monthly compensation for service, which must be meager indeed in instances when their lives are actually exposed to danger. It seems strange, in view of the long line of decisions on this subject, that any one can suppose, even though the power of a state to tax generally is supreme, that that power may be used to hamper, hinder, annoy, harass, and impede the federal government in the exercise of its unlimited power to carry on war. Certainly no state should complain of the terms upon which the federal government rewards its soldiers, when the compensation, insurance, and maintenance and support allowance given them under the federal statute with which we are now dealing is an acquisition and addition to the property of the state, which would never have existed but for the liberality of the federal government in grateful recognition of the services of citizens of each and all the states. The exercise of this war power does not relieve from taxation anything except the compensation which is sent into the state as a reward to soldiers for their services. If it were an attempt of the federal government to relieve from taxation (as seems to be argued in the dissenting opinion) a portion of the property in the state previously subject to taxation, the case would be altogether different."

The Supreme Court of Georgia was discussing this same question in an earlier case, *Rucker vs. Merck*, 172 *Ga.* 793, 159 *S.E.* 501, when it said:

"It is suggested, however, that it is not within the power of the federal government to exempt any property within the limits of the

state from state taxation or from taxes imposed by counties as subordinate governmental divisions of the state. While standing for a strict construction of the constitution and a strict observance of all the rights of the sovereign states, we cannot concur in this contention. The exclusive power to declare war was confided to Congress in the Constitution of 1787 (Const. U.S. Art. 1, Sec. 8, Cl. 11). The power of the federal government in the exercise of its power to make war is unlimited, absolute, and exclusive. And as a part of the war-making power it is the right of Congress to hold forth and to confer pensions and privileges at the conclusion of a war, as a reward to those who are injured or died in defense of the flag. The fact that the United States government has held forth its willingness to pension and provide for those soldiers and their dependents who have died or been disabled in service contributes no little to that willingness on the part of our people to give vital force to the federal government to carry out the power intrusted to it by the federal constitution. As a general rule, of course the federal government has no power to interfere with the processes of the state in the enforcement of local laws in regard to taxation in any commonwealth in the union. But we deem this principle not incompatible with the right of Congress, in the exercise of its exclusive power in the selection of successful means of making war (if it deems it necessary to go to war), to impose conditions upon the gifts or compensation the federal government makes from its own funds. And these must necessarily be paramount, or provide exceptions to the ordinary operation of the state tax laws.

> If there be any truth in the old adage that the right to tax is the right to destroy, then the provision of the federal statute, as applicable in this case, is merely a statement by the general government that its gifts to the soldier shall not be destroyed by any process, not even by the slow and grinding process of taxation."

In *Manning vs. Spry*, 121 *Iowa* 191, 96 *N.W.* 873, the Court said:

> "If the state were permitted to tax pension money, it could virtually destroy any bounty the government might see fit to bestow on its soldiers and sailors, and the guarantee that it should inure wholly to the benefit of the pensioner would be entirely destroyed."

It seems clear to us that by taxing the benefits conferred by the various forms of pension legislation the states are burdening the exertion of a national power. In other words the state is making a source of revenue out of the benefits conferred by the government on its former soldiers. Undoubtedly the state does not have the power to do this. It was said by this Court in *Panhandle Oil Company vs. Mississippi*, 277 *U.S.* 218, 77 *L. Ed.* 857, 48 *S.C. Rep.* 451:

> "These states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions."

As pointed out by Mr. Justice Butler in the Panhandle Oil Company case the strictness of this rule was emphasized in *Gillespie vs. Oklahoma*, 257 *U.S.* 501, 505; 66 *L. Ed.* 338, 340; 42 *Sup. Ct. Rep.* 171.

In *United States vs. Hall*, 98 *U.S.* 343; 25 *L. Ed.* 180, this Court said that pensioners are "in certain aspects wards of the United States." If they be wards of the government, the decisions of this Court in the various cases which discuss the right to tax Indian property are especially applicable. In such cases it has been held that any state tax which hamper the efforts of the United States to make the best terms possible for its Indian wards is in violation of the Federal Constitution in that it is a burden upon or interference with the exertion of those powers granted unto the Federal Government.

See *Gillespie vs. Oklahoma*, 257 *U.S.* 500, 506; 66 *L. Ed.* 338, 341.

Under the same line of reasoning a state tax which would interfere with the soldier wards of the government securing the most from their compensation, pension and insurance awards would be unconstitutional.

It necessarily follows that if State Statutes taxing these gratuities granted by the federal government are unconstitutional the exemption provided

for in the Federal Statute must be a valid exercise of the power vested in the Federal Government under the constitution.

It may be that under the line of cases just cited, it was not necessary for Congress to exempt these gratuities from taxation by statute, but that is a question not necessary to discuss at this time.

IV.

CONCLUSION

Under the authorities herein cited, we earnestly insist that the property of Joseph A. Leake is not subject to taxation by either the State of Tennessee or Blount County and that the Supreme Court of Tennessee was in error in holding that this property is subject to taxation and that the case should be reversed by this Honorable Court.

Respectfully submitted,

RUSSELL R. KRAMER
Solicitor for Petitioner.

D. SYLVAN KRAMER
JOHN W. MORTON,
Of Counsel.

TABLE OF CONTENTS

	Page
Statement of the Case	1
Brief of Law and Argument	2-11

TABLE OF CASES

Choctaw, O. & G. R. Co. vs. Mackey,
65 L. ed. 1076 6

Davis vs. Mitchell,
13 Tenn. (5 Yerg.) 281 9

First National Bank vs. Kentucky,
9 Wall. 353; 19 L. ed. 701 6

Hibernia Sav. & L. Soc. vs. San Francisco,
200 U. S. 310, 50 L. ed. 495 6

Lambert vs. Guilford County,
——N. C.——; 158 S. E., 849 5

Martin vs. Guilford County,
158 S. E., 147; 76 A. L. R. 978 4

McIntosh vs. Aubrey,
185 U. S., 124, 46 L. ed. 837 6

Rucker vs. Merck,
172 Ga., 793; 159 S. E. 501 9

Spicer vs. Smith,
77 U. S. Sup. Court (L. ed.) 599 ..... 8, 10

State vs. Blair, et al,
165 Tenn.——; 57 S. W. (2d) 455 8

State, ex rel Smith vs. Shawnee County,
132 Kan. 233; 294 Pac. 915 ..... 6, 7

Wilson vs. Sawyer,
177 Ark. 492 9

Williams vs. Walton,
16 Tenn. (8 Yerg) 387 9

STATUTES

Code of Tennessee,
Secs. 1084, 1085 3

Constitution of Tennessee,
Art. II, Sec. 28 3

Constitution of the United States
Art. I, Sec. 8 3

United States Code Annotated,
Title 38, Sec. 454 ..... 2, 4, 5, 8, 10

Supreme Court of the United States

OCTOBER TERM, 1932

No. 982

J. T. TROTTER, GUARDIAN OF JOSEPH A. LEAKE,
PETITIONER,

vs.

STATE OF TENNESSEE, IN ITS OWN BEHALF AND FOR THE USE AND BENEFIT OF BLOUNT COUNTY, TENNESSEE.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION OF WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

STATEMENT OF THE CASE

This is a suit brought in the Chancery Court of Blount County, Tennessee, by the State of Tennessee against Arthur Blair, et als to collect a property tax assessed and levied upon, among other property, a tract of land owned by Joseph A. Leake, a non compos mentis, either in his own name or in the

name of his guardian for him. Said tract of land was purchased with funds paid to the guardian for the benefit of the veteran under Sec. 22 of the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.)

The Chancellor before whom the case was heard decreed that the property was not taxable by the State, holding that property purchased by the guardian with the funds of a World War Veteran was not subject to taxation by the State and County. From the judgment of the Chancellor the respondent in this case appealed to the Supreme Court of Tennessee where the judgment of the Chancellor was reversed.

Attorneys for the petitioner have, we think, stated the facts fully and correctly and we, therefore, will not comment on them further.

BRIEF OF LAW AND ARGUMENT

Petitioner has made only one assignment of error to the action of the Supreme Court of Tennessee, in passing on the case at bar, which is as follows:

> "'The Supreme Court of Tennessee erred in holding that the property in question was not exempt from taxation."

This question, so far as we have been able to ascertain, has never been passed upon by this Court.

Among the decisions of the State Courts bearing upon this question, we find that there is a very decided conflict of authority.

The powers of Congress relating to taxation are enumerated in Art. I, Sec. 8 of the Federal Constitution. From a purview of this section of the Constitution it will be seen by the Court that there is no limitation whatever under said Section prohibiting a State and County from levying and collecting taxes on real estate.

In Art. II, Sec. 28 of the Constitution of Tennessee, and in Secs. 1084 and 1085 of the Code of Tennessee the provisions relating to taxable and exempt property provide in substance as follows:

> "All property, real, personal or mixed, shall be taxed, but the Legislature may exempt such as may be held by the State, by counties, cities or towns and used exclusively for public or corporation purposes, and such as may be held for literary or educational purposes, and shall exempt one thousand dollars worth of personal property in the hands of each tax payer, and direct product of the soil in the hands of the producer of his immediate vendee."

It is obvious that the provisions of the Constitution of Tennessee, as well as the Legislative provisions, import no intent on the part of the makers of the Constitution of Tennessee, or of the Legislature, to exempt any property within the State from taxa-

tion, other than that which has been specifically provided for. Neither the Constitution of Tennessee, nor any Act of the Legislature, expressly or impliedly exempt the product of money, received by World War Veterans from the Federal Government, from taxation.

In the case of *Martin* v. *Guilford County*, (a North Carolina case), 158 E. E. 147; 76 A. L. R., 978, the veteran, Martin, with compensation received under the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.), purchased some real estate and personal property. The property thus purchased was taxed by Guilford County. The taxes were paid under protest. A short time after payment of the taxes, notice was given to the proper official demanding a refund of the amount paid, setting up as a reason for the demand that the property had been purchased with funds which had come to him as a World War Veteran, and claiming that the property purchased with said funds was exempt from taxation.

The case was heard upon an agreed statement of facts. A judgment was rendered against the World War Veteran, Martin. From this judgment he appealed to the Supreme Court of North Carolina, where the facts were reviewed and judgment of the lower Court affirmed.

In delivering the opinion of the Court, Judge Connor said:

"The question of law presented for decision by this appeal is whether property, real or personal, located in this state, and otherwise subject to taxation is exempt from such taxation under the laws of the United States, because said property is owned by a veteran of the World War, who purchased and paid for the same with money paid to him by the government of the United States, under the provisions of the act of Congress for the relief of veterans of the World War. The decision on this question involves, primarily, a construction of the provisions of said act found in sections 454 and 618 of Title 38, USCA. Whether Congress has the power, under the Constitution of the United States, express or implied, to exempt property in this state from taxation under its laws, need not be discussed or decided, if these sections, properly construced, do not show that Congress had the purpose or intent to exempt such property from taxation under the laws of this state by the enactment of said section."

The said North Carolina case had a companion case, *Lambert* v. *Guilford County*, ——N. C.——; 158 S. E. 849, in which case a similar question was raised. The veteran had purchased real and personal property out of funds paid him by the Government under Section 22 of the World War Veteran's Act of 1924 (38 USCA Secs. 454, 421, et seq.). The Court held in this case that whether the Federal Constitution gave Congress the power to exempt such property purchased with funds received under

said World War Veterans' Act from taxation by the State was not material, in as much as the World War Veterans' Act showed no intent on the part of Congress to exempt property bought with funds received under said Act from taxation; that the said Act referred to money payable, and that when the money had been paid and the veteran had acquired unrestricted title and control thereof, and invested it in other property, that propery was taxable by the County and State.

So we respectfully insist that the funds in the case at bar were no longer payable to the veteran, but that the funds had already been paid, and hence the exemption provided in the said World War Veterans' Act of 1924 no longer attached to the funds or to the direct product of the funds.

Congress did not intend to exempt property purchased with funds realized from war risk insurance.

State ex rel Smith v. *Shawnee County* 132 Kan. 233, 294 Pac. 915;

Hibernia Sav. & L. Soc. v. *San Francisco*, 200 U. S. 310, 50 L. ed. 495;

McIntosh v. Aubrey, 185 U. S. 124, 46 L. ed. 837;

Choctaw, O. & G. R. Co. v. *Mackey*, 256 U. S. 531, 65 L. ed. 1076;

First Nat. Bank v. *Kentucky*, 9 Wall. 29, 34, 21 L. ed. 791, 793.

The only distinction between the two North Carolina cases, supra, and the case at bar, is that in the North Carolina cases the compensation was paid to the veteran himself, while in the case at bar the money was paid not to the veteran, but to his duly appointed guardian; for in the case at bar it is to be noted that the veteran himself was a non compos mentis, and consequently the only legitimate payment that could have been made would necessarily have to be made to the guardian.

Notwithstanding in the case at bar payment was made to the veteran's guardian, we submit that the same result should be had as was reached in the North Carolina cases, because payment to the guardian was payment to the veteran, in that the guardian was duly appointed by the State Court to represent the non compos mentis veteran in all his undertakings.

The question whether or not the intervention of a guardian between the Government and the veteran would change the situation was discussed by the Supreme Court of Kansas in the case of *State ex rel, Smith* v. *The Board of Commissioners of Shawnee County*, 132 Kan. 233; 76 A. L. R. 980. In the opinion in that case the Court said:

> "We conclude that the intervention of a guardian does not leave the pension funds still in the hands of the Government, so that they are still 'payable' or 'due' the ward as expres-

> sed by 38 USCA, section 454 so as to exempt them from assignment, execution, and taxes, but when paid to the guardian, the title and possession have both passed from the Government and they are no longer 'payable', and consequently not entitled to any exemption from taxes under Sec. 454."

The effect of the intervention of a guardian was just recently decided by this Court in the case of *Spicer* v. *Smith*, 77 U. S. Sup. Court (Law ed) 599. His Honor, Justice Butler, in delivering the opinion of the Court held in substance as follows: Payment of installments of war risk insurance and disability compensation (under the provisions of World War Veterans' Act of 1924) to the guardian of a mentally incompetent veteran vests title in the ward and operates to discharge the obligation of the United States in respect of such installments.

Quoting Justice Butler further in the opinion of the Court, he said:

> "The guardian, appointed by the Court was by the laws of the state given the custody and control of the personal estate of his ward, and was authorized to collect and receive the money in question."

We respectfully insist that in the case at bar, which is reported in 165 Tenn.——; 57 S. W. (2d) 455, the Supreme Court of Tennessee was correct

in holding that the State could tax the property purchased with funds received under the provisions of said World War Veteran Act.

The Supreme Court of Tennessee, speaking further on the case at bar (Transcript of Record, Page 15), laid down this further proposition of law:

> "It is settled in this jurisdiction and elsewhere that in the relation of the guardian and ward, the title to the property is in the ward, and that the possessions of the guardian is the possession of the ward and will inure to the ward's benefit under the Statute of Limitations. Cited *Williams* v. *Walton*, 16 Tenn. (8 Yerg.) 387; *Davis* v. *Mitchell*, 13 Tenn. (5 Yerg) 281. Such is the rule elsewhere, 28 C. J. 1128; 12 R. C. L. 1123."

Petitioner relies chiefly upon the case of *Rucker* v. *Merck*, 172 Ga. 793; 159 S. E. 501. This case does hold that property purchased with funds received from the Government under the provisions of the World War Veteran Act of 1924 is exempt from taxation. However, this holding is contrary to the great weight of authority on the question at bar, and we submit that the holding is contrary to sound rules of construction and reason.

Petitioner cites another case, *Wilson* v. *Sawyer*, 177 Ark. 492. This was a case in which certain funds of a disabled soldier were turned over to the Clerk of the Court to be held for the ward. These

funds were attached, but the Court dissolved the attachment and held that the funds were not subject to attachment until they came into the hands of Tom Sawyer, the veteran. This case is not a parallel case to the case of *Rucker* v. *Merck*, supra, for the reason that the guardian in this case had been discharged, and since the veteran had no guardian the funds were neither in the hands of the veteran nor in the hands of the guardian. This case, then, has no application in deciding the question at bar.

It is contended that the word "payable" as used in the World War Veterans' Act of 1924 (38 USCA Secs. 454, 421, et seq.) does not have the meaning of "due or to become due." This contention is made notwithstanding this Court's holding in the recent case of *Spicer* v. *Smith*, supra. Petitioner undertakes to get around the holding in the said case of *Spicer* v. *Smith* by insisting that the property involved in the case at bar concerns not a matter of title, but is contingent upon whether the funds have reached the veteran himself. Of course, this Court's answer to this proposition will depend upon a construction of the provisions of the World War Veterans' Act (38 USCA Secs. 454, 421, et seq.). We respectfully insist that upon the strength of a reasonable interpretation of the provisions of said Act, and upon the authorities cited herein, that the word "payable" as set out in said Act means "due or to become due." If the funds were paid to the guardian of the veteran, or to the veteran himself, the funds

were no longer payable, and consequently the exemptions of said Act do not apply, and therefore the property in question was not exempt from taxation by the State of Tennessee.

Respectfully submitted,

JAS. G. JOHNSON
SAM JOHNSON
Counsel for Respondent

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 79.—October Term, 1933.

J. T. Trotter, Guardian of Joseph A. Leake, Petitioner,
vs.
State of Tennessee, in its own behalf and for the use and benefit of Blount County, Tennessee, Respondent.

On Writ of Certiorari to the Supreme Court of Tennessee.

[December 4, 1933.]

Mr. Justice Cardozo delivered the opinion of the Court.

The question is whether lands in Tennessee purchased by the guardian of a veteran with moneys received from the United States for the use of the disabled ward are subject to taxation.

Joseph A. Leake became mentally incompetent by reason of his service in the army during the World War. Since May, 1922, the United States Government has paid compensation to his guardian at the rate of $100 a month in accordance with the provisions of Part II of the World War Veterans Act (38 U. S. C., §§ [illegible], *et seq.*), and disability benefits at the rate of $57.50 a month under a policy of War Risk Insurance in accordance with the provisions of Part III of the same act. 38 U. S. C., §§ 511, *et seq.* On June 3, 1924, the guardian purchased land and buildings in Blount County, Tennessee, paying therefor $2,500 in cash out of the moneys theretofore received from the Government, $2,000 in promissory notes, which have been paid out of later moneys derived from the same source, and $1,500 by assuming the payment of a mortgage, which has been discharged by the use of the proceeds of fire insurance covering one of the buildings. State and county taxes assessed upon the land for the year 1929 are in arrears with interest and penalties. The State of Tennessee, the respondent here, brought suit in the Chancery Court to declare the tax a lien enforcible by a sale. The guardian and his ward answered that by force of the federal statutes the land was exempt. The Chancellor sustained the defense and dismissed the complainant's bill. The Supreme Court of Tennessee reversed, and directed the Court of Chancery to award judgment to the State. 165 Tenn. —; 57 S. W. (2d) 455. The case is here on certiorari.

By the World War Veterans Act, "The compensation, insurance and maintenance and support allowance payable under Parts II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III or IV; and shall be exempt from all taxation." Act of June 7, 1924, c. 320, § 22; 43 Stat. 613; 38 U. S. C., § 454; cf. 38 U. S. C., § 618.

Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662, 674. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. *McIntosh* v. *Aubrey*, 185 U. S. 122. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. *McIntosh* v. *Aubrey*, *supra*; *State* v. *Shawnee County Commissioners*, 132 Kan. 233; *Wilson* v. *Sawyer*, 177 Ark. 492; and *Surace* v. *Danna*, 248 N. Y. 18, 24, 25. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of "compensation, insurance, and maintenance and support allowance payable" to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here.

The judgment of the Supreme Court of Tennessee disallowing the exemption has support in other courts. *State* v. *Wright*, Alabama, 140 Southern Rep. 584; *Martin* v. *Guilford County*, 201 North Carolina 63; 158 S. E. 847. There are decisions to the contrary, but we are unable to approve them. *Rucker* v. *Merck*, 172 Ga. 793; *City of Atlanta* v. *Stokes*, Georgia, 165 S. E. 270; *Payne* v. *Jordan*, 36 Ga. App. 787.

Our ruling in *Spicer* v. *Smith*, 288 U. S. 430, leaves no room for the contention that the exemption is enlarged by reason of payment to the guardian instead of payment to the ward.

The judgment is

Affirmed.